United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals of the District of Columbia.

APRIL TERM, 1921.

No. 3513. 740

EQUITABLE SURETY COMPANY, A CORPORATION, APPELLANT,

vs.

THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., A CORPORATION, AND ALBERT CARRY, INTERVENER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 28, 1921.

PRINTED MAY 4, 1921.

Court of Appeals of the District of Columbia.

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THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., A CORPORATION, AND ALBERT CARRY, INTERVENER, APPELLEES.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 26, 1921.

Court of Appeals of the District of Columbia.

No. 3513.

EQUITABLE SURETY COMPANY, a Corporation, Appellant,

vs.

THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., &c., et al.

a Supreme Court of the District of Columbia.

Equity, No. 35365.

EQUITABLE SURETY COMPANY, a Corporation, Plaintiff,

vs.

THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Bill of Complaint for Injunction.*

Filed August 16, 1917.

In the Supreme Court of the District of Columbia.

Equity, No. 35365.

EQUITABLE SURETY COMPANY, a Corporation, Plaintiff,

vs.

THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., a Corporation, Defendant.

The Bill of Complaint of Equitable Surety Company, a corporation, respectfully shows the Court as follows:

First. That the plaintiff is a corporation, organized and existing under and by virtue of the laws of the State of Missouri, with its

principal place of business in the City of St. Louis, Missouri, and brings this action in its own right.

Second. That the defendant is a corporation, duly organized and existing under the provisions of the National Banking Act, and has its principal office and place of business in the City of Washington, District of Columbia, and is sued herein in its own right.

Third. That on the 15th day of December, 1913, one Albert Carry, of the City of Washington, District of Columbia,
2 deposited with the defendant corporation the following certificates of stock:

Certificate No. 2073, for 10 shares of the capital stock of the National Savings and Trust Company.

Certificate No. 2074, for 5 shares of the capital stock of the National Savings and Trust Company.

Certificate No. 2076, for 5 shares of the capital stock of the National Savings and Trust Company.

Certificate No. 1648, for 10 shares of the capital stock of the American Security and Trust Company.

Certificate No. 1944, for 2 shares of the capital stock of the American Security and Trust Company.

Certificate No. 3796, for 8 shares of the capital stock of the American Security and Trust Company.

Certificate No. 3777, for 10 shares of the capital stock of the American Security and Trust Company.

Certificate No. 8, for 250 shares of the capital stock of the East Washington Savings Bank.

Certificate No. 2145, for 5 shares of the capital stock of the National Metropolitan Bank.

Certificate No. 571, for 10 shares of the capital stock of the National Capital Bank.

Certificate No. 822, for 10 shares of the capital stock of the National Capital Bank.

That the said deposit of the aforesaid stock was made to secure the Equitable Surety Company, plaintiff herein, against any loss it might sustain by reason of its liability on a certain bond of guaranty into which the said plaintiff entered to secure the faithful performance of the terms and conditions of a certain contract of lease made and entered into by and between one M. A. Brast and United States of America, under and by the terms of which
3 said contract of lease the said Brast bound and obligated himself to drill an oil well on each of thirty-two (32) subdivisions of land on the Reservation of the Osage tribe of Indians in the State of Oklahoma.

Fourth. That the said deposit of stock was made to secure the Equitable Surety Company against loss, as aforesaid, and was made for the sole and only purpose of protecting the said plaintiff corporation against any loss it might sustain by reason of its liability on the aforesaid bond of guaranty, and the only agreement or understanding of any sort concerning the said deposit by the said Carry is a certificate of the said defendant corporation by its President, H. H. McKee, a copy of which said certificate, setting forth the terms and con-

ditions upon which the said deposit of security is held by the defendant, is attached hereto and marked "Plaintiff's Exhibit A."

Fifth. That the said M. A. Brast, his successors and assigns, have failed and declined to carry out the terms and conditions of the aforesaid contract of lease entered into by and between the said Brast and the said United States of America and, as a result of the said breach of said contract of lease, your plaintiff became liable as surety on bond of the said Brast in the sum of Ninety-Six Thousand Dollars ($96,000) to the United States of America. That on, to-wit, the 6th day of April, 1917, United States of America filed suit in the United States District Court for the Western District of Oklahoma against your plaintiff, M. A. Brast and the Summit Oil and Gas Company, a corporation, which said corporation was the assignee of a part of the interest of the said Brast in the aforesaid contract of
4 lease, the said case being known as "United States, plaintiff, vs. Summit Oil and Gas Co., a corporation; Equitable Surety Co., a corporation, and M. A. Brast, defendants, Law Docket No. 1656." That the said suit is for liquidated damages in the sum of $30,000 on account of the failure of the said Brast, his successors and assigns, to drill certain test oil wells as agreed in the lease between the said Brast and the United States of America hereinbefore mentioned. And in the event judgment is entered against your plaintiff in the said sum of Thirty Thousand Dollars ($30,000) it will then have a right to demand from the said defendant the delivery to it of the stock certificates hereinbefore mentioned.

Sixth. That the said Albert Carry, depositor of the said stock has made demand upon the defendant for the delivery of all the certificates hereinbefore mentioned to him and your plaintiff, in the event the said defendant delivers the stock to the said Albert Carry, would be without remedy and without indemnity against loss in the event it was compelled to pay any judgment entered against it in the aforesaid action brought by the United States against it and others in the United States District Court for the Western District of Oklahoma, and would suffer great and irreparable loss and damage thereby.

Seventh. That the said Albert Carry, depositor of the stock certificates hereinbefore mentioned, is the Vice-President and a member of the Board of Directors of the defendant corporation.

Eighth. That your plaintiff has no plain, adequate and complete remedy at law and hence brings this action in this Court of equity, in which Court its interests and rights are cognizable.

5 Wherefore, your plaintiff prays:

First. That a United States writ of subpœna issue out of this Court to the defendant, commanding it to appear herein and answer the exigencies of this Bill.

Second. That the defendant, the National Capital Bank of Washington, D. C., be directed to show cause on a day certain, why it should not be enjoined by this Court from delivering the stock certificates mentioned in the third paragraph above to Albert Carry or to any person or persons other than your plaintiff until such time as the liability of your plaintiff is determined in the action brought by

the United States against it and others in the United States District Court for the Western District of Oklahoma, and until such further time thereafter as the rights of your plaintiff to the said stock have been determined by appropriate proceedings in this Court.

Third. And for such other and further relief as the nature of the case may require and to equity seem just and proper.

EQUITABLE SURETY COMPANY,
By THOS. C. BRADLEY,
Atty. for Equitable Surety Co.

THOS. C. BRADLEY,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

I, Thomas C. Bradley, on oath do say that I am the attorney for the Equitable Surety Company, a corporation, and, as such, subscribed the foregoing Bill of Complaint; that I have read the
6 said Bill and that the allegations therein contained are true to the best of my knowledge, information and belief.

THOS. C. BRADLEY.

Subscribed and sworn to before me this 16th day of August, 1917.

J. R. YOUNG,
Clerk,
By C. B. COFLIN,
Asst. Clk.

Rule to Show Cause.

Filed August 17, 1917.

* * * * * * *

Upon consideration of the Bill of Complaint filed herein, it is by the Court, this 17th day of August, 1917, ordered that the defendant show cause on or before the 22nd day of August, 1917, why it should not be restrained and enjoined as prayed in said Bill, provided a copy of this order is served upon it at least two (2) clear days before the day aforesaid.

WILLIAM HITZ,
Associate Justice.

Marshal's Return.

Served a copy of the within rule on The National Capital Bank of Washington, by serving H. H. McKey, Pres'd personally. Aug. 8, 1917.

MAURICE SPLAIN,
U. S. Marshal.

7 *Motion and Notice to Produce Papers.*

Filed August 28, 1917.

* * * * * * *

Now comes the defendant by Walter H. Marlow, Jr., its Attorney, and moves the Court to require the plaintiff to file herein duly authenticated copies of the following papers mentioned in its Bill herein viz: (1) The bond mentioned in paragraph three (3) of said bill: (2) The lease entered into between the United States and M. A. Brast, mentioned in said paragraph; (3) The certificate purporting to be signed by H. H. McKee and mentioned in the fourth (4) paragraph of said bill; four (4) a copy of the complaint filed by the United States against the plaintiff and mentioned in the fifth (5) paragraph of said bill; (5) The assignment by the said Brast to the Summit Oil Company and mentioned in said fifth (5) paragraph; (6) The agreement between said Summit Oil Company and said Albert Cary, which was filed with said plaintiff at the time that the stock mentioned in said bill was deposited with said Bank and (7) copies of any other contracts or agreements which have been entered into by or between the parties mentioned in said bill or which cover the subject matter thereof, and said defendant by its said Attorney further moves the Court to continue the time of said defendant for answer to the rule heretofore issued in this cause until the aforesaid copies are filed.

WALTER H. MARLOW, JR.,
Defendant's Attorney.

8 Thomas C. Bradley, Esquire,
Plaintiff's Attorney:

Please take notice that I will call the attention of the Court to the foregoing motion on Friday the 31st day of August A. D. 1917 at ten o'clock a. m. or as soon thereafter as Counsel may be heard.

WALTER H. MARLOW, JR.,
Defendant's Attorney.

PLAINTIFF'S EXHIBIT "A" TO BILL.

Filed August 29, 1917.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Eq. No. 35365.

EQUITABLE SURETY COMPANY, a Corporation, Plaintiff,

vs.

THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., Defendant.

The National Capital Bank of Washington,

316 Pennsylvania Ave. S. E.

Washington, D. C., Dec. 15, 1913.

This is to certify that Albert Carry, of the City of Washington, District of Columbia, has deposited in the National Capital Bank of Washington, D. C.,

Twenty shares of stock of the National Savings and Trust Company as per certificate 2073, for ten shares, 2074 for five shares, and 2076 for five shares.

9 Thirty shares of stock of The American Security and Trust Company as per certificate No. 1648 for ten shares, 1944 for two shares, 3796 for eight shares, 3777 for ten shares.

Two hundred and fifty shares of stock of the East Washington Savings Bank as per certificate No. 8 for two hundred and fifty shares.

Five shares of the stock of the National Metropolitan Bank as per certificate No. 2145 for five shares.

Twenty shares of stock of the National Capital Bank as per certificates No. 571 for ten shares, and 822 for ten shares. The present market value of the above mentioned stock being $23,000.00.

The said deposit of security to be held by the National Capital Bank of Washington, D. C. to secure the Equitable Surety Company of St. Louis, Mo., as its interests may appear, in connection with a certain bond in the sum of $96,000.00 executed by the said the Equitable Surety Company to guarantee the faithful performance of a certain contract by one M. A. Brast, or his successors or assigns, who has leased for oil and gas purposes 32 tracts or parcels of land in Osage County, State of Oklahoma.

[Seal The National Capital Bank, Washington.]

(Signed) H. H. McKEE,
Cashier.

10 *Answer to Rule to Show Cause.*

Filed December 13, 1917.

* * * * * * *

The defendant, The National Capital Bank of Washington, D. C., saving and reserving all benefit by exception or otherwise, to the errors and imperfections in the bill of complaint contained, for return to the rule to show cause issued herein, states as follows:

1-2. Respondent admits the allegations of first and second paragraphs of said bill of complaint.

3. Respondent admits the deposit of the certificates of stock described in the third paragraph of said bill, for the purpose therein set forth; a certificate enumerating said stock and setting forth the terms and conditions upon which the said deposit was held having been issued to said Carry by this respondent by H. H. McKee, its Cashier, and a duplicate of said certificate having been delivered to plaintiff.

4. This respondent admits the deposit of said certificates of stock as aforesaid but it does not know and therefore cannot admit that the certificate or receipt issued by it by its Cashier was the only agreement or understanding of any sort concerning the said deposit of stock by said Carry. In this connection it says that at the expiration of one year from the date on which said deposit was made, said Albert Carry demanded that the said certificates of stock be returned to him, giving as his reason for making said demand the existence of a certain agreement in writing made on the 13th day of

11 September, 1913, between the Summit Oil and Gas Company, a corporation, and said Albert Carry, wherein it is stipulated and agreed that the period of time during which the certificates aforesaid were to remain on deposit with the respondent, as collateral security for the purposes set forth in the bill of complaint herein, should be limited to one year from date of said agreement; and further alleging that the terms and conditions of the agreement last aforesaid were well known to plaintiff, which was furnished a copy thereof, prior to its assumption of liability as surety upon the bond of guaranty referred to in the bill of complaint, and that it well knew, prior to becoming surety upon said bond, that said deposit of collateral was limited to the period of one year, after the expiration of which period said Carry was to be at liberty to demand and receive said collateral from respondent, to all of which the plaintiff, before its assumption of liability aforesaid, fully and freely assented. Respondent further says that subsequent to the demand made by said Albert Carry for the return of the certificates of stock aforesaid, the plaintiff likewise demanded that the respondent surrender the said certificates of stock to said plaintiff.

5. Respondent has no personal knowledge of the matters and things stated in the fifth paragraph of the bill of complaint, and therefore can neither admit nor deny the same, except that it denies, for the reasons hereinbefore set forth, that plaintiff will have the

right to demand from respondent the delivery of the aforesaid stock certificates as stated in said paragraph.

6. Respondent admits that Albert Carry has demanded the delivery to him of said stock certificates, but denies that plaintiff would be without remedy, or would suffer loss or damage, as alleged in the sixth paragraph of plaintiff's bill. Respondent states that it is solvent, and financially able to satisfy any judgment at law which might be obtained against it for breach of any contract or agreement made by it concerning the matters involved in this suit; and expressly denies that it contemplates or will commit a breach of any contract or obligation assumed by or binding upon it in the premises.

7. Respondent admits the allegations of the seventh paragraph of said bill of complaint.

8. Respondent denies that plaintiff has no remedy at law, as alleged in the eighth paragraph of said bill, and on the contrary submits that the bill of complaint does not state facts sufficient to warrant the relief therein prayed, or to give to a Court of Equity jurisdiction to entertain this suit.

And having fully answered, respondent prays that the rule to show cause herein be discharged, with costs to respondent.

THE NATIONAL CAPITAL BANK
OF WASHINGTON, D. C.,
By HENRY H. McKEE,
President.

DISTRICT OF COLUMBIA, *ss:*

I, Henry H. McKee, on oath depose and say that I am the President of The National Capital Bank of Washington, D. C., a corporation, and as such subscribed the aforegoing Bill of Complaint; and that I have read the said Bill of Complaint and that the allegations therein contained are true to the best of my knowledge, information and belief.

HENRY H. McKEE.

Subscribed and sworn to before me this 10th day of December, 1917.

[SEAL.] CHARLES A. McCARTHY,
Notary Public, D. C.

Motion to Dismiss Bill.

Filed February 13, 1918.

* * * * * * *

Comes now the defendant, The National Capital Bank of Washington, D. C., a corporation, by its counsel, and moves the Court to dismiss the original bill of complaint filed herein, upon the following grounds:

1. Because the statements of fact contained in said bill of complaint do not make out a case cognizable in a Court of Equity.

2. Because said bill of complaint fails to allege facts showing that plaintiff has not a plain, adequate and complete remedy at law.

3. Because it appears from the allegations of said bill of complaint that Albert Carry, therein named, is a necessary party to this suit, and he has not been made a party to this proceeding.

4. Because the allegations of fact in said bill of complaint contained are too vague, indefinite and uncertain to require answer, or to warrant any decree thereon.

14

WALTER H. MARLOW, JR.,
Attorney for Defendant.

To Thomas C. Bradley, Esq.,
Attorney for Plaintiff:

Please take notice that the foregoing motion will be calendared for the next motion day.

WALTER H. MARLOW, JR.,
(M.), *Attorney for Defendant.*

Order Denying Motion to Dismiss Bill.

Filed March 2, 1918.

* * * * * * *

Upon consideration of the Motion filed in the above entitled Cause on the 13th day of February, A. D., 1918, to dismiss the original Bill of Complaint filed herein and after argument by counsel for both sides, it is, by the Court, this 2nd day of March, A. D. 1918 ordered, adjudged and decreed:

1st. That the said motion be, and the same hereby is, denied;

2nd. That the said defendant plead to the said Bill within fifteen (15) days from the date of this Order.

F. L. SIDDONS,
Associate Justice.

15 *Stipulation of Counsel.*

Filed March 15, 1918.

* * * * * * *

It is hereby stipulated by Counsel for the respective parties, this 15th day of March, 1918, that the return heretofore filed to the rule to show cause issued herein shall be considered and stand as the answer to the bill of complaint, and that no other or further answer to said bill need be filed.

THOS. C. BRADLEY,
Attorney for Plaintiff.
P. H. MARSHALL,
Of Counsel for Defendant.

Temporary Restraining Order.

Filed March 15, 1918.

* * * * * * *

Upon consideration of the Bill of Complaint, the Rule to Show Cause, and the Answer of the defendant to the said Rule, it is, by the Court, this 15th day of March, 1918, ordered:

First. That the defendant, National Capital Bank, of Washington, D. C., be and it hereby is, enjoined from delivering or turning back to Albert Carry, or to any person or persons for him, or to any person or persons other than the plaintiff herein, the certificates of stock mentioned and set forth in the Bill of Complaint, filed
16 herein, until the final determination of this Cause.

F. L. SIDDONS,
Associate Justice.

Supplemental Bill for Receiver.

Filed February 7, 1919.

* * * * * * *

The plaintiff respectfully shows to the court as follows:

First. That, heretofore, to wit, on the 16th day of August, 1917, the plaintiff herein exhibited his original bill against the defendant above named, alleging that the said defendant had in his possession certain securities in the form of various certificates for shares of stock; that said securities were deposited with the said defendant by one Albert Carry to be held by the said defendant for the benefit of the plaintiff to secure it against loss on account of its liability, as surety on a certain bond guaranteeing the faithful performance of a contract entered into by and between one M. A. Brast and the United States of America; that the said M. A. Brast, his successors and assigns, had failed and declined to carry out the terms of the aforesaid contract, as a result of which failure your plaintiff had been named defendant in the suit filed in the United States District Court of Oklahoma by the United States of America; that the depositor of said stock, the said Albert Carry, had made demand upon the defendant for the delivery of the said securities to him and that the defendant would suffer great and irreparable
17 loss if the aforesaid securities were delivered by the defendant, herein, to the said Albert Carry, and that the said bill prayed that the said defendant be enjoined, by this court, from delivering the said stock certificates to Albert Carry or to any person or persons other than your plaintiff until such time as the liability of your plaintiff might be determined in the action brought by the United States against it as aforesaid, and the plaintiff further shows that the defendant appeared and answered the said Bill & that an

order was made and entered in this Cause on the 15th day of March 1918, restraining the defendant as prayed in said Bill.

Second. And now, by way of supplement to the original Bill, the plaintiff says that, on or about the 7th day of January, 1919, judgment was entered in the District Court of the United States for the Western District of Oklahoma in the aforesaid action brought by the United States of America against your plaintiff and another in the sum of $30,000 and in the further sum of $981.37, together with interest thereon from December 22nd, 1914, until paid, and in the further sum of $1,635.62, together with interest thereon, from the 22nd day of November, 1915, until paid, besides costs, the total amount of the said judgment being $32,616.99, and said sum your plaintiff will be compelled to pay with interest as above stated, and costs of the suit.

Third. That the aforesaid securities were deposited by the aforesaid Albert Carry with the defendant to secure your plaintiff against any loss which it might be compelled to pay or which it might become liable to pay; that by reason of its liability on account
18 of the judgment, hereinabove referred to, entered against it in the said District Court of the United States for the Western District of Oklahoma, your plaintiff is entitled to have delivered to it by the said defendant the aforesaid certificates of stock set forth and described in the original bill filed herein.

Fourth. That the plaintiff further shows to the court that it has notified and advised the defendant herein of the entering of judgment in the aforesaid United States District Court for the Western District of Oklahoma against it in the sums hereinabove mentioned and demanded of the defendant the aforesaid certificates of stock, more fully set forth and described in the original bill heretofore filed herein, but that the said defendant has failed, refused and declined and still does refuse and decline to deliver to your plaintiff the aforesaid certificates of stock or any of them, notwithstanding the fact that your plaintiff is entitled to have the aforesaid certificates of stock delivered to him under the terms and conditions of the certificate of deposit set forth in the original bill filed herein and marked "Plaintiff's Exhibit A."

Wherefore, the premises considered, your plaintiff prays:

First. That the plaintiff may have the full benefit of the suit and proceedings now pending in this cause, together with the relief prayed herein.

Second. That this Honorable Court, by its order, appoint a receiver or receivers to take possession of the certificates of stock mentioned herein and more fully set forth and described in the original bill filed herein and hold the same subject to the further order of this court.

19 Third. That the defendant, the National Capital Bank of Washington, be directed to show cause on a day certain why a receiver or receivers should not be appointed by this Honorable Court to take possession of the certificates of stock mentioned in the original bill filed herein and hold same pending the final determination of this cause or until further order of this court.

And for such other and further relief as the nature of the case may require and to equity seem meet and proper.

EQUITABLE SURETY COMPANY,
By THOS. C. BRADLEY,
Atty. for Equitable Surety Co.

THOS. C. BRADLEY,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

I, Thomas C. Bradley, on oath do say that I am attorney for the Equitable Surety Company, a corporation, and, as such, subscribed the foregoing Supplemental Bill; that I have read the said Supplemental Bill and that the allegations therein contained are true to the best of my knowledge, information and belief.

THOS. C. BRADLEY.

Subscribed and sworn to before me this 7th day of February, 1919.

J. R. YOUNG,
Clk.,
By F. E. CUNNINGHAM,
Asst. Clk.

20 *Answer of Defendant to Supplemental Bill & Rule to Show Cause.*

Filed February 21, 1919.

* * * * * * *

To the Honorable the Justice of said Court:

The defendant, the National Capital Bank of Washington, D. C., saving and reserving all benefit, by exception or otherwise, to the errors and imperfections contained in the original and supplemental bills herein filed, for answer to said supplemental bill and the Rule thereon issued or to so much thereof as it is advised it is necessary and material to answer, states as follows:

First. For answer to the first paragraph of said supplemental bill, this defendant says, that the original bill will best establish and show what was stated therein, but with respect to the allegations which said paragraph purports to recite, this defendant refers to its answer to the Rule to show cause, issued upon said original bill, which return by stipulation of Counsel, is to be held and considered as this defendant's answer to said original bill, and defendant states that the matters and things in its said return and answer set forth are true and prays that the same may be considered in connection with and as part of this answer, without repetition herein.

Second. For answer to the second paragraph of said supplemental bill, this defendant says, that it can neither admit nor deny the allegations thereof concerning the rendition and entry of the judgment in the District Court of the United States for the Western Dis-

trict of Oklahoma, for the reason that this defendant has
21 never seen the original judgment, or a duly exemplified or certified copy thereof and in this connection this defendant submits that until a properly authenticated copy of said alleged judgment is filed in this cause, it is not entitled to any faith or credit in this Honorable Court. Defendant has been informed by the plaintiff herein that such a judgment has been entered, but being without knowledge as to whether the same was regularly obtained and in due form, if in fact rendered and entered at all, demands strict proof thereof, should the Court be of opinion that the same is material to the determination of this cause. Defendant however denies the materiality of said judgment if it was ever in fact rendered, for the reason that the securities involved in this cause were deposited with defendant by Albert Carry, in the pleadings herein referred to, for the period of one year only, as this defendant has been informed by said Albert Carry, as set forth by this defendant in its answer to the original bill and the judgment aforesaid was entered, if at all, after the expiration of said period of one year, by reason whereof, said alleged judgment confers upon the plaintiff herein, no right or claim affecting said securities. Defendant further states that it is informed, believes and therefore avers that the plaintiff herein has noted an appeal from whatever judgment may have been entered as aforesaid, and has obtained a stay of execution thereon and leave to file a bond superseding said judgment, pending the result of said appeal, and that the plaintiff intends to supersede the same and to prosecute said appeal, and that the plaintiff has paid nothing whatever because of said judgment and has sustained no loss by reason thereof; and defendant states that the exhibit
22 alleged to be, but not attached to the original bill, marked "Plaintiff's Exhibit A" and alleged in paragraph four thereof to be "the only agreement or understanding of any sort concerning the said deposit by the said Carry" does not give to plaintiff any claim upon said securities upon the facts as set forth in said original and supplemental bills.

Fourth. For answer to the fourth paragraph of said supplemental bill, this defendant admits that it has been informed by the plaintiff as to the entry of the judgment aforesaid, and refers to the second paragraph of this answer, as to the remaining allegations of said paragraph 4.

For further answer hereto, this defendant says that it is a national bank and is solvent and in all respects a proper custodian of the securities in controversy, and it submits that no sufficient cause has been shown by the plaintiff for the appointment of a receiver for said securities.

And having fully answered, this defendant prays to be hence dismissed, with its costs in this behalf most unjustly incurred.

THE NATIONAL CAPITAL BANK,
WASHINGTON, D. C.,
By HENRY H. McKEE, *President.*

W. H. MARLOW,
BELL, MARSHALL & RICE,
Defendant's Attorneys.

DISTRICT OF COLUMBIA, *ss:*

I, Henry H. McKee on oath depose and say, that I am the President of The National Capital Bank of Washington, D. C.: that I have heard read the foregoing answer by me subscribed on behalf of said bank and know the contents thereof: that the facts
23 stated therein as on personal knowledge are true and those facts which are stated as upon information I believe to be true.

HENRY H. McKEE.

Subscribed and sworn to before me, this 21st day of February, A. D. 1919.

[SEAL.] CHARLES A. McCARTHY,
Notary Public, D. C.

Petition of Albert Carry for Leave to Intervene.

Filed February 21, 1919.

* * * * * * *

To the Honorable the Justice of said Court:

The petition of Albert Carry, respectfully shows,

First. That he is a citizen of the United States and a resident of the District of Columbia.

Second. That he is the owner of the securities in these proceedings mentioned and as such owner is a proper and necessary party to this cause.

Third. That on or about the 15th day of December, 1913, this petitioner deposited with the defendant herein, certain securities of the then market value of Twenty-three thousand ($23,000.) dollars and which securities were to be held by said defendant for the term of one year only, from the date aforesaid and upon the expiration of which period they were to be returned to petitioner. That said securities were deposited as aforesaid pursuant to the terms and
24 conditions of a certain agreement in writing, signed by the Summit Oil and Gas Company, a corporation created and organized under the laws of the State of West Virginia. A copy of said agreement being annexed hereto, marked, "Exhibit Carry A", and which it is prayed may be read and considered as part hereof, as though fully set forth herein.

Fourth. That petitioner had no transactions concerning the matters aforesaid with the plaintiff herein, or any officer or representative thereof, and had no transactions or dealings concerning the securities aforesaid except with said Summit Oil and Gas Company, as set forth; and petitioner expressly denies that he entered into any contract or agreement whatever with said Equitable Surety Company,

the plaintiff herein, concerning the matters involved in this suit and states that his only contract in regard thereto was with said Summit Oil and Gas Company, as hereinbefore set forth.

Fifth. That upon the expiration of the period of one year during which petitioner had agreed to leave said securities in the custody of the defendant herein, he demanded of the latter that it return said securities to him in accordance with the terms of the contract between them, but the return of said securities was refused by said defendant, because of some alleged claim by the plaintiff herein upon said securities by virtue of some pretended agreement that they were to remain as indemnifying security to said plaintiff, in the event that it should suffer loss under a certain bond to the United States of America, executed by it as surety and one M. A. Brast as principal, to secure the performance by said Brast of a certain contract between him and the United States of America. Petitioner says that
25 said plaintiff's aforesaid claim is without foundation and that while the securities in question were placed by him in the custody of the defendant bank, pursuant to the agreement hereinbefore mentioned, and attached hereto, as his exhibit A, nevertheless petitioner had not at any time any transactions or dealings with said plaintiff, in the matter aforesaid.

Sixth. That the defendant herein is entirely solvent and a fit and proper custodian of said securities pending the final determination of this cause, and petitioner respectfully submits that no reasons exist for the appointment of a receiver for said securities, as prayed by said plaintiff.

Seventh. Petitioner further alleges that no loss has resulted to said plaintiff by reason of its suretyship upon the bond of the said Brast, as alleged in the supplemental bill herein, the same has been superseded, an appeal noted therefrom and it is not a final judgment. This petitioner has no sufficient knowledge concerning said alleged judgment, either to admit or deny the existence thereof and respectfully submits that if the existence of same is material, which petitioner denies, for the reasons herein set forth a duly authenticated copy of the record should be produced and filed in this cause.

Wherefore the premises considered petitioner prays:

1. That he may be allowed to intervene herein as a party defendant.

2. That process may issue upon this petition, directed to the plaintiff and the defendant herein, requiring them to answer the exigencies hereof.

3. That the preliminary injunction heretofore granted in this cause be dissolved.

26 4. That the securities referred to in these proceedings be decreed to be the property of this petitioner, free of any and all claim thereto, on the part of either of the parties plaintiff or defendant to this cause.

5. That this petition stand and be considered as an answer to both the original and supplemental bills filed in this cause.

6. That this petitioner may have such other and further relief

as the nature of the matter and equity and good conscience require and to the Court appear meet and proper.

ALBERT CARRY.

BELL, MARSHALL & RICE,
Petitioner's Attorneys.

DISTRICT OF COLUMBIA, *ss:*

I, Albert Carry, on oath depose and say, that I have read the foregoing petition, by me subscribed and know the contents thereof; that the facts stated therein upon my personal knowledge are true and the matters stated therein upon information and belief I believe to be true.

ALBERT CARRY.

Subscribed and sworn to before me this 20″ day of February, A. D. 1919.

[SEAL.]

EMMA R. BELL,
Notary Public, D. C.

27 "EXHIBIT CARRY A."

This agreement, made this the 10th day of December, 1913, by and between the Summit Oil & Gas Company, a corporation created and organized under the laws of the State of West Virginia, party of the first part, and Albert Carry of Washington, D. C., party of the second part.

Witnesseth: That,

Whereas, one M. A. Brast, having heretofore leased for oil and gas purposes, some thirty-two (32) tracts or parcel of land situate in Osage county, State of Oklahoma, and

Whereas, under the terms of said leases the said M. A. Brast was required to give bond in the sum of Ninety-six thousand ($96,000.00) dollars conditioned according to law, to secure the faithful performance of the conditions and agreements contained in and made a part of said leases, one of the conditions being that the said M. A. Brast, or his assigns should drill a well upon each and every of the said thirty-two (32) subdivisions so leased by him as aforesaid within a period of twelve months from the execution and affirmation of said leases, and in the event the said M. A. Brast or his assigns do not so drill a well upon each and every of the said thirty-two (32) subdivisions, then in that event he is to pay, or cause to be paid, the sum of two thousand ($2,000.00) dollars for each and every subdivision of the said thirty-two, upon which he or his assigns fails to drill a well within the said period of one year as before stated. The said bond hereinbefore referred to, having been

28 given by the said M. A. Brast with the Equitable Surety Company, of St. Louis, Mo., as surety in the penalty of ninety-six thousand ($96,000.00) dollars, as aforesaid, to secure the drilling of said wells as aforesaid, and

Whereas, the Summit Oil & Gas Company, a corporation, has become the assignee, and is now the assignee of the following subdivisions heretofore leased to the said M. A. Brast. That is to say.

"Subdivisions Nos. 13, Northwest ¼ of Section, 3; 14 Northeast ¼ of Section 4; 24, Southwest ¼ of Section 4; 25, Lots 8 and 9, Section 5; 27, Northwest ¼ of Section 9; 32, Northeast ¼ of Section 10; Lots 3 and 4 and Northeast ¼ of Southeast ¼ of Section 9; 55, Lots 1 and 2 of Section 15; all in Twp., 21 N., R. 7 E.; Nos. 99, Southeast ¼ of Section 35; 101, Southwest ¼ of Section 34; 103, Southeast ¼ and Lots 4 and 5 of Section 33; all in Twp., 22 N., R. 7 E.: Nos. 110, Southeast — of Section 27; 111, Southwest ¼ of Section 27; 121, Southeast ¼ of Section 34; 123, Southeast ¼ of Section 33; all in Twp., 22 N., R. 6 E., No. 22 Southwest ¼ Section 3 Twp., 21 Range 7, Osage County, being subdivisions of Osage Indian Oil and Gas Lease Tract No. 5." And

Whereas, the said Summit Oil & Gas Company under and by virtue of said assignments from the said M. A. Brast to it, has promised and agreed to carry out and fulfill all the obligations, promises and agreements contained in and made a part of said leases, and has agreed to relieve the said M. A. Brast upon said bond of Ninety-six thousand ($96,000.00) dollars in the proportion that said sixteen subdivisions or leases, bear to the whole number of thirty-two subdivisions leased in the first instance, and has agreed to put up
29 the equal one-half (½) part or portion of the collateral required by the Equitable Surety Company; that is to say: the sum of Seventeen thousand, five hundred dollars the said sum of Seventeen thousand five hundred dollars being one-half of the amount of collateral security required to be placed with the Equitable Surety Company, in consideration of its becoming surety on said bond of Ninety-six thousand dollars, as hereinbefore mentioned, and

Whereas, the said Albert Carry, party of the second — has agreed, in consideration of the premises hereinafter stated, to furnish and put up for the said Summit Oil & Gas Company, good and sufficient collateral to be acceptable to the Equitable Surety Company, to the amount of Seventeen thousand five hundred dollars, for the term of one year from date hereof.

In consideration of which the said Summit Oil & Gas Company does agree with the said Albert Carry, party of the second part, that it will indemnify and save harmless the said Albert Carry, party of the second part, from the losses sustained in the event the said Summit Oil & Gas Company fails to perform the conditions contained in and made a part of said leases upon said subdivisions hereinbefore mentioned, in the drilling of said well or wells as required under and by virtue of said leases upon said subdivisions; that in the event the said party of the first part, fails to drill all or any of the said wells required by said leases to be drilled, thereby incurring liability under the bond made and executed by said M. A. Brast and the Equitable Surety Company, then in that event, the said party of the first part will pay, or cause to be paid to said
30 Albert Carry, any and all amounts of loss that he may sustain by reason of having placed such collateral with said surety company. The meaning and intendment of this agreement being, that in the event any part of said collateral is taken by said Equitable Surety Company, by reason of the violation of, or failure to carry out

the conditions of said leases, then the said Summit Oil and Gas Company is to pay to the said Albert Carry for all collateral so taken, or which may be taken by the said Equitable Surety Company of the said seventeen thousand five hundred ($17,500.00) dollars, as hereinbefore mentioned, so that the said Albert Carry, party of the second part, shall be fully and completely indemnified by reason of any and all loss sustained or which may be sustained by him by reason of the pledge of said collateral with said Equitable Surety Company.

It is further agreed upon and hereby made a part of this contract that the said Summit Oil & Gas Company is to pay to the said Albert Carry, as a further consideration for his pledging said collateral security with said Equitable Surety Company, interest at the rate of six per cent upon the amount or amounts so pledged by him with said Surety Company for and during the time said collateral securities are held by said Equitable Surety Company under the terms and conditions of the bond hereinbefore mentioned.

In testimony whereof, the Summit Oil & Gas Company, a corporation, has caused its corporate name to be signed and its corporate seal to be affixed hereto, by its President thereunto duly authorized, this 10th day of December, 1913.

[Corporate Seal.] SUMMIT OIL & GAS COMPANY,
A CORPORATION,
By M. A. BRAST,
President.

Attest:
C. E. GRETTMAN,
Secy.

31 STATE OF WEST VIRGINIA,
County of Kanawha, ss:

I, A. M. Belcher, a Notary Public in and for the County and State aforesaid, do certify that M. A. Brast personally appeared before me in my said county, and being first duly sworn did depose and say, that he is the President of the Summit Oil & Gas Company, the corporation described in the foregoing writing, bearing date the 10th day of December, 1913, authorized by said corporation to execute and acknowledge deeds and other writings of said corporation, and that the seal affixed to said writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation, by its authority duly given. And the said M. A. Brast acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this the 11th day of December, 1913.

My commission expires on the 17th day of Aug. 1915.

A. M. BELCHER,
Notary Public.

Fiat.

Feby. 21, 1919.

Let this petition be filed.

By the Court:

JENNINGS BAILEY,
Justice.

32 *Order Making Albert Carry Party Defendant.*

Filed February 28, 1919.

* * * * * * *

Upon consideration of the petition of Albert Carry, herein filed, It is by the Court, this 28th day of February, A. D. 1919, ordered, that said petitioner be and he hereby is made a party defendant to the above entitled cause and that he be and he hereby is allowed 20 days from the date hereof to further answer or plead, as he may be advised, to the original and supplemental bills herein filed.

By the Court,

JENNINGS BAILEY,
Justice.

Order Appointing Receivers.

Filed February 28, 1919.

* * * * * * *

Upon consideration of the Bill of Complaint and the Supplemental Bill filed herein, the Answers of the defendants, the Intervening petition of William Dall and the arguments of counsel for all parties, it is, by the Court, this 28th day of February, 1919, ordered,

That Thos. C. Bradley and Alexander H. Bell, be and they hereby are appointed Receivers of this Court to take possession of and hold pending final determination of this Cause, the certificates of stock set forth and described in the Original Bill filed herein upon
33 giving bond in the penalty of $30,000 conditioned for the faithful performance of their trust.

And it is further ordered that the defendant, The National Capital Bank, turn over and deliver the aforesaid certificates of stock to Thos. C. Bradley and Alexander H. Bell, as Receivers of this Court.

JENNINGS BAILEY,
Asso. Justice.

O. K.
C. H. MERILLAT,
Atty. for Wm. Dall.

To the above order Albert Carry notes an exception, for that he has not had this day in Court with respect to it.

BELL, MARSHALL & RICE,
Attorneys for Albert Carry.

Motion for Order Directing Delivery of Dividends.

Filed April 7, 1920.

* * * * * * *

Comes now the plaintiff, by its counsel, and moves the Court to pass an order herein directing the intervening defendant, Albert Carry to pay over and deliver to Thos. C. Bradley and Alexander H. Bell, Receivers, all moneys received by him or his agents as dividends on the stock of the several Banks and Trust Companies held by them as Receivers appointed by the Court in this Cause, since the 7th day of January, 1919, and for reasons therefor says:

First. That the judgment of the District Court of the
34 United States for the Western District of Oklahoma, as set forth in the Supplemental Bill filed herein was rendered on the aforesaid 7th day of January, 1919, and, that this plaintiff was entitled to the possession of the said certificates of stock on that day.

Second. That the said Receivers of the Court in this Cause are entitled to collect all dividends accruing and payable on said stocks since the said 7th day of January, 1919.

Third. That the Receivers will be required to account for all dividends accrued, paid or payable on the certificates of stock in their hands as Receivers of the Court in this Cause.

THOS. C. BRADLEY,
Attorney for Plaintiff.

BELL, MARSHALL & RICE,
Attys. for Albert Carry.

313 John Marshall Place, N. W.,
Washington, D. C.

Take notice that the foregoing Motion will be presented to the Court, on Friday, the 9th day of April, 1920, at ten o'clock A. M., or so soon thereafter as counsel can be heard.

THOS. C. BRADLEY,
Attorney for Plaintiff.

Service of a copy of the above acknowledged this 6th day of April,, 1920.

BELL, MARSHALL & RICE,
Attorneys for Intervening Defendant, Albert Carry.

35 *Answer of Plaintiff to Intervening Petition of Albert Carry.*

Filed April 7, 1920.

* * * * * * *

The answer of Equitable Surety Company, a corporation, to the petition of Albert Carry for leave to intervene in the above entitled cause respectfully shows to the Court as follows:

First. It admits the allegations contained in the first paragraph.

Second. It denies the allegations contained in the second paragraph of said petition and avers the fact to be that it is the owner of the securities mentioned and referred to therein.

Third. It admits that on or about December 15, 1913, the said intervening petitioner deposited with the defendant, the National Capital Bank, Washington, D. C., the securities referred to in the third paragraph of the intervening petition of the said Carry, but denies that the said securities were to be held by the said defendant for the term of one year only, and denies that they were to be returned to the said Albert Carry at the expiration of one year from the date of their deposit by the said defendant. The plaintiff denies said securities were deposited pursuant to the terms and conditions of a certain agreement in writing, and annexed to the intervening petition of the said Carry and marked "Exhibit A", and denies the right of the said intervener, Albert Carry, to have the said agreement read and considered as part of his intervening petition.

Fourth. The plaintiff denies each and every allegation
36 contained in the fourth paragraph of the aforementioned intervening petition.

Fifth. The plaintiff neither admits nor denies the allegations contained in the fifth paragraph of the aforesaid intervening petition wherein it is set forth and alleged that the said intervener, Albert Carry, demanded of the defendant the said securities and demands strict proof thereof if it be regarded material. Plaintiff denies each and every other allegation in said fifth paragraph contained.

Sixth. Plaintiff neither admits nor denies the allegations contained in the sixth paragraph of the intervening petition and demands strict proof thereof if the same be regarded as material.

Seventh. Plaintiff denies the allegation of the seventh paragraph of the said intervening petition that no loss has resulted to it by reason of its suretyship upon the bond of the said Brast, denies that any supersedeas bond has ever been given and that the judgment in the United States District Court for the Western District of Oklahoma, as the same is set forth in the supplemental bill filed herein is not a final judgment, and avers the fact to be that it is a final judgment.

Wherefore, having fully answered the petition of the said Albert Carry for leave to intervene, herein the plaintiff prays that the same

may be hence dismissed and that it may be allowed its costs in this behalf most unjustly sustained.

EQUITABLE SURETY COMPANY,
A CORPORATION,
By THOS. C. BRADLEY,
Attorney of Record.

THOS. C. BRADLEY,
Attorney for Plaintiff.

37 DISTRICT OF COLUMBIA, *ss:*

I, Thomas C. Bradley, on oath depose and say that I am the attorney of record for the plaintiff in the above entitled cause, and, as such, have authority to sign and verify the foregoing answer; that I have read the said answer and know the contents thereof, and verily believe the facts stated therein to be true to the best of my knowledge and belief.

THOS. C. BRADLEY.

Subscribed and sworn to before me this 7th day of April A. D. 1920.

J. R. YOUNG,
Clk.,
By F. E. CUNNINGHAM,
Asst. Clk.

We consent to filing above Apl. 7, 1920.
BELL, MARSHALL & RICE,
Attys. for Carry.

Answer of Albert Carry to Original and Supplemental Bills.

Filed June 1, 1920.

* * * * * * *

The separate answer of the intervening defendant, Albert Carry, to the original and supplemental bills herein respectfully shows:

1. That this defendant having no personal knowledge of the incorporation of the plaintiff, its organization, existence or the place of its principal office, as set forth in the first paragraph of
38 said bill, can neither — nor deny said allegations; and if the same be material he demands strict proof thereof.

2. That this defendant admits the truth of the allegations of the second paragraph of said Bill.

3. This defendant admits the deposit, with the National Capital Bank of Washington, D. C., of the certificates of stock mentioned and described in paragraph numbered three of said Bill of Complaint, but he expressly denies that said deposit of stock was made to secure the Equitable Surety Company, plaintiff herein, against any

loss it might sustain by reason of its liability on a certain bond of guaranty, as alleged in said paragraph.

This defendant says that the only contract or agreement entered into by him, concerning the securities aforesaid, was with the Summit Oil and Gas Company of West Virginia, a corporation duly organized under the laws of the State of West Virginia, a copy of said contract being on file in this case, marked "Exhibit A" to the petition of this defendant, praying leave to intervene in this cause as a party defendant.

4. This defendant expressly denies that said deposit of stock was made to secure said Equitable Surety Company against loss, as alleged in paragraph four of the Bill of Complaint herein, and further expressly denies that said deposit was made for the sole and only purpose of protecting said Equitable Surety Company against any loss it might sustain by reason of its liability on the bond of guaranty referred to in said paragraph. That except so far as is disclosed by said Exhibit A, this defendant has no knowledge of the exe-
39 cution or terms of the bond of guaranty mentioned in said paragraph four, but if the same proves material to his interests he demands strict proof of the execution and terms of said bond. That this defendant had no transactions concerning the matters aforesaid with the plaintiff herein, nor with any officer or representative thereof, and had no transactions or dealings concerning the securities aforesaid, except with said Summit Oil and Gas Company, as hereinbefore set forth; and defendant expressly denies that he entered into any contract or agreement whatever with said Equitable Surety Company, the plaintiff herein, concerning the matters involved in this suit, and states that his own contract in regard thereto was with said Summit Oil and Gas Company, incorporated, as aforesaid, as hereinbefore set forth.

This defendant denies that the only agreement or understanding of any sort concerning his deposit of the aforesaid securities is the certificate of the defendant corporation, described in said paragraph four, and repeats the statements of his answer concerning the contract between himself and the aforesaid Summit Oil and Gas Company.

5. Answering the allegations of the fifth paragraph of said Bill of Complaint, this defendant says that he is without personal knowledge, and therefore can neither admit nor deny the allegations thereof concerning the failure of said M. A. Brast, his successors and assigns, to carry out the terms and conditions of the alleged contract of lease entered into between said Brast and the United States of America, nor has this defendant any personal knowledge concerning the allegations of said paragraph, and cannot and does not, therefore, admit nor deny the same, that a result of the said
40 aleged breach of contract of lease, the plaintiff became liable, as surety, in the manner and to the amount in said paragraph set forth. Defendant further says that he is without knowledge, and therefore can neither admit nor deny, the allegations of said paragraph concerning the filing of suit by the United States of America against the plaintiff, M. A. Brast, and the Summit Oil and

Gas Company, nor can defendant, by reason of lack of personal knowledge, either admit or deny any of the allegations of said paragraph, concerning said suit. As to all of the matters hereinbefore mentioned, about which this defendant has no personal knowledge, he demands strict proof of the same, should the Court be of the opinion that they are material to the issues herein.

Further answering said paragraph this defendant respectfully refers to the fifth paragraph of his intervening petition herein, and prays that the same may be read and considered as a part hereof, without repetition in this answer.

6. This defendant admits that he has demanded the delivery to him of the certificates referred to in paragraph Six of said Bill of Complaint, and he respectfully submits that he is entitled to have the same returned to him. Further answering said paragraph six, this defendant, upon information and belief, denies that the plaintiff would be without remedy and indemnity against loss as in said paragraph alleged, and submits that the plaintiff has no cause of action against this defendant concerning the matters aforesaid, for reasons hereinbefore set forth.

7. Answering paragraph seven, this defendant admits that
41 he is vice-president and a member of the Board of Directors of defendant, National Capital Bank of Washington, D. C., but denies the materiality of said fact herein.

8. This defendant is advised that the matters set forth in the eighth paragraph of said Bill of Complaint are merely conclusions of law, which it is not necessary that he should answer.

1. And by way of answer to the Supplemental Bill filed herein February 7, 1919, this defendant says that he is advised, and therefor- submits, that the matters hereinbefore stated by him constitute a sufficient answer to the first paragraph of said Supplemental Bill.

2. For answer to the second paragraph of said Supplemental Bill, this defendant has no knowledge concerning the alleged judgment set forth in said second paragraph, and can neither admit nor deny the same, and therefore demands strict proof thereof should the same be material in this cause. Defendant further demands strict proof concerning any loss to the plaintiff herein by reason of its alleged transactions with M. A. Brast and the Summit Oil and Gas Company of West Virginia, should such matters be held to be material in this cause.

3. Answering the third paragraph of said supplemental bill, this defendant repeats his denial that the securities therein referred to were deposited by him to secure the plaintiff herein against any loss which it might be compelled to pay or become liable to pay, and concerning said allegations respectfully refers to the matters and facts hereinbefore set forth in this answer; and this defendant further denies, for reasons heretofore stated that the plaintiff is en-
42 titled to have delivered to it the said certificates of stock mentioned in said paragraph three, and submits that the duty and obligation of establishing its right to the possession of, and its interest in, said stock by the terms of the deposit rececipt filed as an

exhibit to the Original Bill herein is imposed upon the plaintiff in this cause.

4. Answering the allegations of the fourth paragraph of said supplemental bill, this defendant says that the same relate to certain alleged notices and advices from the plaintiff to the defendant Bank, and that it is not necessary that this defendant shall answer the allegations of said paragraph. This defendant states, upon information and belief, that no certified copy of any alleged judgment against the plaintiff, or against any other party to said alleged suit, has ever been served upon or exhibited to said defendant Bank, and no such copy has ever been served upon or exhibited to this defendant. Concerning the other allegations of said paragraph this defendant submits that the matters herein set forth by him constitutes a sufficient answer thereto.

And now having fully answered this defendant prays to be hence dismissed.

ALBERT CARRY.

BELL, MARSHALL & RICE,
Deft.'s Attys.

DISTRICT OF COLUMBIA, *To wit:*

I, Albert Carry, on my oath do depose and say that I have
43 heard read the foregoing answer by me subscribed, and know the contents thereof; that the statements therein made as of my personal knowledge are true and those made as upon information and belief, I believe to be true.

ALBERT CARRY.

Subscribed and sworn to before me this 1st day of June, A. D. 1920.

[SEAL.]

EMMA R. BELL,
Notary Public, D. C.

Fiat.

June 1, 1920.

Let this answer be filed nunc pro tunc.
By the Court:

JENNINGS BAILEY,
Justice.

Final Decree.

Filed June 21, 1920.

* * * * * * *

This cause came on to be heard upon the pleadings, exhibits and testimony and was argued by counsel for the respective parties and was considered by the Court, whereupon, it is by the Court, this 21 day of June, A. D., 1920, adjudged, ordered and decreed, that the

original and supplemental bills herein filed, be, and the same hereby are dismissed, at the cost of the plaintiff; that the Receivers heretofore herein appointed, forthwith surrender and deliver to
44 Albert Carry, intervener herein, or to his attorneys of record in this cause, the certificates of stock heretofore placed in the custody of said Receivers and that thereupon said Receivers be, and they hereby are discharged.

By the Court,

JENNINGS BAILEY,
Justice.

An appeal from the above decree is hereby noted to the Court of Appeals.

THOS. C. BRADLEY,
Atty. for Plaintiff.

Undertaking to act as a supersedeas and to continue the receivership is fixed at $5,000.00.

JENNINGS BAILEY,
Justice.

Memoranda.

July 15, 1920.—Undertaking on appeal of plaintiff for $5,000.00 approved and filed.

August 5, 1920.—Time for filing statement of evidence and transcript of record extended to August 30, 1920.

45 August 30, 1920.—Time for filing statement of evidence, designation of record and assignment of error extended to September 10, 1920.

September 10, 1920.—Statement of evidence submitted.

Assignment of Errors.

Filed September 10, 1920.

* * * * * * *

First. The Court erred in dismissing the Original and Supplemental bills.

Second. The Court erred in admitting the letters of A. W. Hurley offered by the defendant.

Third. The Court erred in not holding that A. W. Hurley was the agent of the intervening defendant, Albert Carry.

Fourth. The Court erred in not holding that the securities deposited by Albert Carry in the National Capital Bank were deposited for the purpose of securing the plaintiff against loss on its bond in the event of the failure of the Summit Oil & Gas Company to drill one well on each of the tracts or locations assigned to it by M. A. Brast, and such failure to drill in accordance with the terms in the

lease having resulted in liability, the plaintiff was entitled to the securities.

Fifth. The Court erred in admitting testimony as to the
46 failure of the Equitable Surety Company to release the original collateral deposited by Hurley and others.

Sixth. The Court erred in holding that the plaintiff was not entitled to recover because of its failure to return to Hurley such portion of the original collaterals deposited by him as would equal in value the securities deposited by Albert Carry.

Seventh. The Court erred in holding that the plaintiff was not entitled to recover because demand had not been made by it on the National Capital Bank for delivery of the securities deposited by Carry.

Eighth. The Court erred in holding that the securities deposited by Carry had never been accepted by the Plaintiff.

Ninth. The Court erred in sustaining an objection to testimony offered tending to show the circumstances leading up to the assignments made by Brast to the Summit Oil & Gas Company.

Tenth. The Court erred in excluding the testimony offered by the plaintiff tending to show what disposition had been made of the Assets of the Summit Oil & Gas Company.

THOS. C. BRADLEY,
Attorney for Appellant.

47 *Designation of Record.*

Filed September 10, 1920.

* * * * * * *

The clerk, in making up the record, will include the following papers:

First. The original bill, filed August 16, 1917.

Second. Rule to show cause, filed August 17, 1917.

Third. Motion to produce papers and notice, filed August 28, 1917.

Fourth. Plaintiff's Exhibit "A" to bill, filed August 29, 1917.

Fifth. Answer of the defendant to the Rule to Show Cause, filed December 13, 1917.

Sixth. Motion of the defendant to dismiss the bill, filed February 13, 1918.

Seventh. Order denying motion of defendant to dismiss the bill, filed March 2, 1918.

Eighth. Stipulation, filed March 15, 1918.

Ninth. Order enjoining defendant, filed March 15, 1918.

Tenth. Supplemental bill, filed Feb. 7, 1919.

Eleventh. Answer of the defendant to Supplemental bill and Rule to Show Cause, filed February 21, 1919.

Twelfth. Intervening petition of Albert Carry Exhibit and Fiat of Mr. Justice Bailey, filed February 21, 1919.

Thirteenth. Order making Albert Carry party defendant, filed February 28, 1919.

Fourteenth. Order appointing Thomas C. Bradley and Alexander H. Bell Receivers, filed Feb. 28, 1919.

48 Fifteenth. Motion of plaintiff for delivery of dividend to receivers, filed April 7, 1920.

Sixteenth. Answer of plaintiff to intervening petition of Albert Carry, filed April 7, 1920.

Seventeenth. Answer of Intervener, Albert Carry, to Original and Supplemental bills, filed June 1, 1920.

Eighteenth. Final Decree Dismissing Original and Supplemental bills, and Notice of Appeal, filed June 21, 1920.

Nineteenth. Undertaking on Appeal of plaintiff for Five Thousand ($5,000.) Dollars, filed July 15, 1920.

Twentieth. Order extending time to file Statement of Evidence and Transcript of Record, filed August 5, 1920.

Twenty-first. Order extending time to file Statement of Evidence and Transcript of Record, filed August 30, 1920.

Twenty-second. Statement of Evidence submitted Sept. 10, 1920.

Twenty-third. Assignment of Errors, filed Sept. 10, 1920.

Twenty-fourth. This Designation of Record filed Sept. 10, 1920.

THOS. C. BRADLEY,
Attorney for Appellant.

49 *Memoranda.*

January 5, 1921.—Order to submit amended statement of evidence, filed.

January 8, 1921.—Statement of evidence submitted.

January 22, 1921.—Statement of evidence signed and filed.

50 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 49, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 35,365 in Equity, wherein Equitable Surety Company, a Corporation, is Plaintiff and The National Capital Bank of Washington, D. C., a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of February, 1921.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

E. W.

51 In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity, No. 35365.

EQUITABLE SURETY COMPANY, a Corporation, Plaintiff,

vs.

THE NATIONAL CAPITAL BANK OF WASHINGTON, D. C., a Corporation, Defendant, and ALBERT CARRY, Intervener.

Statement of Evidence.

On hearing of the above cause before Mr. Justice Bailey, sitting in Equity Court No. two, proceedings were had and testimony in substance following, was taken:

On May 26, 1920 WILLIAM D. WEEKLEY testified that he was Assistant Chief of the Land Division Office of Indian Affairs, United States Department of the Interior; that his office had charge of all records relating to oil, gas and mining leases of Indian lands and he produced from the original files and identified the following papers:

1. Oil and gas lease, dated October 15th, 1913, same being marked "Plaintiff's Exhibit #1", between Fred Lookout, Principal Chief of the Osage Tribal Council, and M. A. Brast covering certain subdivisions in the Osage Reservation, same being approved on the 22nd day of November, 1913 by the Department of the Interior in accordance with the rules and regulations governing the leasing of
52 lands in the Osage Reservation, of which regulations the Court took judicial notice.

2. Bond of M. A. Brast as Principal, and the Equitable Surety Company as Surety, dated October 15th, 1913, guaranteeing the faithful performance of all the obligations assumed by M. A. Brast in the oil and gas lease, approved by the Department of the Interior on the 22nd day of November 1913. This paper was marked "Plaintiff's Exhibit No. Two."

3. Assignment of sixteen (16) of the parcels, tracts or subdivisions included in the lease between M. A. Brast and Fred Lookout, approved by the Department of the Interior November 22, 1913, by Brast to the Summit Oil & Gas Company, a corporation, said assignment being dated December 2, 1913, and being accepted by the assignee on the 2nd day of December, 1913, consented to by the Surety on the 18th day of December, 1913, and approved by the Department of the Interior on January 14, 1914, same being marked "Plaintiff's Exhibit No. three."

4. Assignment of eight (8) parcels, tracts or subdivisions included in the original lease between M. A. Brast and Fred Lookout, approved by the Department of the Interior on November 22, 1913 by M. A. Brast to the Summit Oil & Gas Company, the said assignee

having accepted the foregoing assignment on the 4th day of February, 1914, and the Equitable Surety Company having consented to the assignment on the 19th day of February, 1914, and said assignment being approved by the Department of the Interior on April 2, 1914, same being marked "Plaintiff's Exhibit No. four."

All of the signatures and endorsements on the foregoing Exhibits were duly proven by the testimony of William D. Weekley,
53 A. W. Hurley, Horace P. De Hart and Edgar B. Meritt, Assistant Commisisoner of Indian Affairs, all witnesses of lawful age produced by the plaintiff and being first duly sworn. All of the foregoing Exhibits were duly offered in evidence and admitted by the Court.

Exhibit No. One was an oil and gas lease entered into by M. A. Brast and Fred Lookout, as Principal Chief of the Osage Tribal Council, and covered thirty-two (32) subdivisions of territory in the Osage Reservation in Oklahoma. The lease was dated October 15, 1913, and approved by the Department of the Interior on the 22nd day of November, 1913. Under the rules and regulations governing the leasing of lands in the Osage Reservation of Oklahoma, for oil and gas mining purposes, of which the Court took pudicial knowledge, it was required that all leases be approved by the Interior Department of the United States. The description of the thirty-two (32) tracts or subdivisions, leased by the said Brast, are set forth in this lease and are the same as are set forth in the bond, Plaintiff's Exhibit No. two. Plaintiff's Exhibit No. two, a bond given in accordance with the requirements of the rules and regulations above referred to, of which the Court took judicial notice, guaranteed the faithful performance of Brast's agreement, as set forth in Plaintiff's Exhibit No. one, to drill one well on each of the thirty-two (32) locations leased by him within one year from the date of approval of the said lease by the Department of the Interior, under penalty of two thousand ($2,000.00) dollars for failure to drill on each of the thirty-two (32) locations, which said date of approval was
54 November 22, 1913. Plaintiff's Exhibit No. three was an assignment of sixteen (16) subdivisions, tracts or locations included in the original lease between Brast and Fred Lookout, Plaintiff's Exhibit No. one, by said Brast to the Summit Oil & Gas Company, a corporation, organized under the laws of the State of West Virginia, and the sixteen (16) subdivisions included in this assignment are the same subdivisions mentioned and set forth in an exhibit attached to the petition of Albert Carry, intervening defendant, in the above case, praying leave to intervene. It was required by the rules and regulations, of which the Court took judicial notice, that the surety on the bond of the original lessor consent to this assignment before it could be approved or was approved by the Department of the Interior, and the plaintiff herein did so consent.

Exhibit No. four was an assignment of eight (8) tracts, parcels or subdivisions included in the original lease between Brast and Fred Lookout by M. A. Brast to the Summit Oil & Gas Company, a corporation, organized under the laws of West Virginia, and was con-

sented to by the Equitable Surety Company, the surety of the original bond by Brast, in accordance with the rules and regulations of the Department of the Interior, of which the Court took judicial notice.

All of the signatures and endorsements on the foregoing exhibits were duly proven by the testimony of William L. Weekley, A. W. Hurley, Horace P. De Hart and Edgar B. Meritt, Assistant Commissioner of Indian Affairs, all witnesses of lawful age, produced by the plaintiff and being duly sworn, and all the foregoing exhibits were duly offered in evidence and admitted by the Court.

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WILLIAM D. WEEKLEY, recalled, identified a pamphlet containg the rules and regulations governing the leasing of lands in the Osage Reservation in Oklahoma in force and effect in the years 1913, 1914 and the same was admitted in evidence on offer of the plaintiff. Thereupon, witness produced a letter dated January 27th, 1916, which was offered in evidence and marked "Plaintiff's Exhibit No. five," reading as follows:

"Jan. 27, 1916.

The Honorable The Secretary of the Interior.

SIR:

November 22, 1913, the Department approved oil and gas lease between Fred Lookout, Principal Chief of the Osage Tribal Council, and M. A. Brast, covering certain subdivisions aggregating 4,505.24 acres in the Osage Reservation, and, on January 14 and April 2, 1914, approved assignments by Brast to the Summit Oil & Gas Company covering certain subdivisions contained in said lease as follows: Nos. 12, 13, 14, 16, 22, 23, 24, 25, 27, 32, 50, 53, 54, 55, 89, 99, 101, 103, 110, 111, 119, 120, 121 and 123.

There is transmitted herewith report dated January 4, 1916, from the Superintendent of the Osage Agency, advising that the Summit Oil & Gas Company has not paid the sum of $30,000 which became due on November 22, 1914, by reason of its failure to drill a well on each of 15 subdivisions covered by the assignments in its favor.

In connection with the delinquency of the Summit Oil and Gas Company attention is respectfully invited to Indian office letter of August 7, 1915 (1-C 151,772-13; 82005-15 J. W. W.), wherein the terms and provisions of the lease were considered and recommendation made that the Superintendent be instructed to take appropriate action looking to the collection of the amounts due. This recommendation was approved by the Assistant Secretary on August 11, 1915.

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The record herewith will show that the Summit Oil and Gas Company has been given ample time within which to make payment of the amounts due under this lease. It is therefore recommended that the lease be canceled in so far as the subdivisions heretofore mentioned are concerned, after which it is the intention of the office

to prepare the case for submission to the Department of Justice for institution of suit to collect the amount due.

Respectfully,

E. B. MERRITT,
Assistant Commissioner.

1—21—A. F. S.
Jan. 28, 1916.
Lease canceled as recommended.

BO SWEENEY,
Assistant Secretary."

HENRY H. MCKEE, a witness of lawful age, produced by the plaintiff, was duly sworn and testified as follows: That he was President of the National Capitol Bank of Washington, D. C., having been Cashier of said bank on December 15, 1913. He identified his signature on a receipt given by him as Cashier of the defendant bank, said receipt being dated on the 15th day of December, 1913, and attached to the original bill filed herein as "Plaintiff's Exhibit A".
57 The certificate of deposit identified by Mr. McKee was thereupon offered in evidence by the plaintiff, and admitted by the Court. He further testified as follows:

Q. I will ask you to state, Mr. McKee, at whose request and under what circumstances and conditions you executed that paper. A. On December 15, 1913, Mr. Albert Carry, Mr. Joseph I. Weller, and a gentleman who was introduced to me as Mr. Goettman, as Secretary of the Summit Oil & Gas Company, came into my office and requested that the National Capital Bank become the depositary for these shares of stock spoken of in this agreement. I demurred at first, but they insisted, and I finally consented to receive the shares of stock, and issued this certificate for them, and it was done at the request of Mr. Carry, the owner of the stock.

Q. Did you issue any other certificate than this? A. I issued two copies of this in addition to this original.

Q. You issued two in addition to this one, you say? A. I did.

Q. To whom were they issued? A. I gave two of them to Mr. Carry and placed one of them with the shares of stock in the vault of the bank.

Q. You gave two to Mr. Carry? A. Yes, sir, I gave two to Mr. Carry.

Q. Do you know what Mr. Carry did with the two that he had? A. I do not.

Q. Did you see him give one of them to Mr. Goettman or anybody else? A. I did not.

58 Q. Do you know whether or not he did give one to Mr. Goettman? A. I don't know.

Q. This sets forth your entire connection and what knowledge you have concerning this deposit of stock? A. Yes, sir.

Q. Did Mr. Carry ever tell you what he did with this certificate of deposit you gave him, the receipt for the certificate? A. Not to my knowledge; I can't recall that he told me what he did.

Q. Did you ever discuss the matter with him as referring to what he did with it? A. Not specifically with reference to that certificate. A. Not specifically with reference to that certificate.

Q. Do you know whether or not Mr. Goettman was given one of those two? A. I don't know.

Q. Was anything said about what Mr. Carry was going to do with it? A. With the certificates?

Q. Yes, with this certification of the receipt of this stock. A. It was not stated to me at that time.

Q. Was anything said about the purpose for which this stock was being deposited other than as set forth in this certificate itself? A. Not outside of what was set forth in these certificates. It was put there to protect the Equitable Surety Company in going on the bond of this Brast.

Q. Was anything said about any assignment of leases by Brast?

59 Mr. Marshall: I object to that as leading.

The Court: The witness is apparently a hostile witness.

By Mr. Bradley: Was anything said about any assignment? You said it was put there to protect the Equitable Surety Company against loss on account of going on the bond of Mr. Brast? I will ask you to refresh your recollection and answer whether or not it was to protect the Equitable in consideration of going on the bond of Mr. Brast, or in consideration of the assignment of lease to some other person?

Mr. Marshall: Objected to as leading.

The Court: I think he can answer. Answer the question.

A. I gathered from the conversation that took place when they were in the office that the Summit Oil and Gas Company was going to take over certain undertakings of Mr. Brast's, and that this stock was put up to protect the Surety Company that had gone on the bond of Mr. Brast.

Q. Mr. Carry was present during this conversation? A. Yes, sir.

Q. Do you know whether or not Mr. Carry was a stockholder or interested party in the Summit Oil & Gas Company? A. I don't know anything about it.

Q. Did he tell you he was? A. He told me that he had an interest in stock.

Q. Did he ever tell you the extent or amount of his interest? A. Never.

Q. Mr. McKee, at the time you signed this certificate of deposit, or at any other time, was anything ever said to you about the purpose of procuring three certificates, duplicates of which have been identified?

60 Mr. Marshall: Objected to. If anything was ever said to him by whom?

Mr. Bradley: By Mr. Carry or in Mr. Carry's presence by anyone else.

The Court: Answer the question.

The Witness: I was simply requested to make two copies in addition to the one I placed with the stock. I told him I would have to have a copy to place with the stock and they requested that two other copies be made and given to them.

Q. Was the certificate that you placed with the stock identical with the certificate here executed in all respects? A. Yes, sir.

Q. Did it have any identification marks on it to show it was a duplicate of this? A. It is my recollection, but I won't be positive, that the one I placed with the stock was the original and the others were carbon copies, but I won't be positive about that.

Q. Where is the one that you placed with the stock? You have it still haven't you? A. I believe it is in the National Capital Bank.

Q. Will you produce that tomorrow morning? A. Yes, sir.

Q. Without any further subpœna? A. Yes, sir, I will.

Q. Was any statement ever made to you in Mr. Carry's presence by him or any other person, or any statement made to you by Mr. Carry or by anyone else in his presence as to the reason why he wanted the certificate, and why two of those certificates were to be given to him?

—. ——.

61 Q. I mean why two were to be given to him? A. Naturally he would want one certificate as a receipt, but there was nothing said to me as to why he wanted more than one. He simply requested that two copies be given to him, and I executed them and gave them to him in accordance with his request. (R. Vol. 2, p. 88.)

Mr. Marshall: Objected to, because the question has already been asked and answered.

The Court: He answered.

On the following day, June 2nd, 1920, Mr. McKee, further testifying, produced the third receipt mentioned in his testimony of the day before, same being identical with the plaintiff's Exhibit "A" to the original bill. At the Court's direction, it was returned to the witness.

On cross examination the witness testified that the conversation taking place when the certificates were issued was substantially embodied in the certificate itself. Counsel for plaintiff stated that the witness had testified that nothing was said at any conversation in his presence, concerning the purpose of the deposit of the stock aforesaid, other than what was stated in the certificate. The Court said, "Yes; I think he said several times that nothing was said except what was embodied in that paper." (R. Vol. 3, p. 93.)

Witness testified that the securing of the leases by Brast had already been accomplished, and Brast was going to assign those leases to the Summit Oil and Gas Company. (R. Vol. 3, p. 94.)

That according to the recollection of witness, it was stated
62 to him by either one or perhaps two or maybe all of the parties that Mr. Brast had secured these oil leases and that in order to do so he had to furnish a bond to the United States Government, and that they were going to take over the oil leases from Brast, and

it was necessary for him to furnish some security to the surety Company. (R. Vol. 3, p. 96.) It was mentioned that there was some agreement between Mr. Carry and the Summit Oil and Gas Company. (R. Vol. 3, p. 97.)

JOHN A. FAIN, a witness of lawful age, duly sworn, being called by the plaintiff, testified that he was United States Attorney for the Western District of Oklahoma, and prosecuted an action on behalf of the United States against the Summit Oil & Gas Company, The Equitable Surety Company, and M. A. Brast; that the Summit Oil & Gas Company, defendant in the cause was the Summit Oil & Gas Company of West Virginia, and, thereupon, plaintiff offered a properly authenticated copy of the proceedings brought by the United States to recover the penalty of the bond given by M. A. Brast and the Equitable Surety Company, and the Court admitted same, and it was marked "Plaintiff's Exhibit No. Nine." In said duly authenticated copy of the proceedings aforesaid, the defendant Summit Oil & Gas Company was designated as the Summit Oil & Gas Company, a corporation organized under the laws of the State of Arizona, because whereof the defendants move to strike out the testimony of the witness that the Summit Oil & Gas Company, defendant in said cause, was the Summit Oil and Gas Company of West Virginia, but said objection was over-ruled and exception noted by defendants' counsel. (R. Vol. 3, p. 104.) The record shows that judgment was entered against the Equitable Surety Company and the said Summit Oil & Gas Company, on the 7th day of January, 1919 in the amount shown in the Supplemental Bill filed herein, on
63 account of the failure of the assignee of Brast, said Summit Oil & Gas Company, to drill certain oil wells in accordance with the terms of the lease entered into between Brast and Fred Lookout.

Witness testified that he had examined the records in the Office of the Secretary of State of the State of Oklahoma, and there found applications for permits to do business in the State of Oklahoma, filed by two corporations, one known as the Summit Oil & Gas Company of West Virginia and the other as the Summit Oil & Gas Company of Arizona, but that this was the only suit filed against the Summit Oil & Gas Company of either Arizona or West Virginia.

Mr. Fain further testified that he had not examined personally the judgment rool of the case referred to in the State of Oklahoma, but had duplicate copies thereof in his office, and that according to those copies, no appeal had been prosecuted from the Judgment Roll referred to on May 12, 1920. That witness had examined the duplicate copies of the Judgment Roll, which copies were always kept in his office, but had not been made by him personally, for the purpose of sending a proof of claim against the Equitable Surety Company to the United States Commissioner, by whom said Surety Company was being liquidated and that the affairs of said Surety Company were still being liquidated by said Commissioner at the time witness went out of office. (R. Vol. 3, pp. 112, 113, 114.)

Whereupon, JAMES VAN BUREN of lawful age, being duly sworn, was called by the plaintiff and testified that he was Vice-President and Resident Manager of the Kansas City Office of the Fi-
64 delity and Deposit Company of Maryland; that he was, on December 18th, 1913, Resident Vice-President and Manager of the Kansas City Office of the Equitable Surety Company, plaintiff, herein. Witness was shown Plaintiff's Exhibit "A" and thereupon testified as follows:

"A. I have seen this certificate before.

Q. When did you last see it previous to today? A. I think it was December, 1913.

Q. What were the circumstances under which you saw it? A. Why, the Equitable Surety Company had become surety upon a certain bond or bonds for M. A. Brast covering oil leases and this certificate was presented for the purpose of making the substitution of the collaterals called for in this certificate for certain indemnities which we had taken on the bonds or on the bond.

Q. Was that substitution made. It was accepted by the Equitable Surety Company as—— A. (Interrupting.) The matter was considered and presented to our St. Louis office and I think they finally agreed to make the substitution.

Mr. Marshall: Now I object to what the witness thinks and move it be stricken from the record.

Q. Mr. Van Buren, did you get that paper as agent of the Equitable Surety Company? A. Yes, it was delivered to me.

Q. By whom? A. Well, I don't know the exact person who—two or three in my office at one time. I know it was presented to me; I couldn't say just who presented it, the person, which gentlemen presented it.

Q. Who was present in your office at that time besides
65 yourself? A. Mr. Brast, and Mr. Hurley and Mr. Vandervoort, I think.

Q. Was anybody else here? A. If I remember Mr. Goettman was here.

Q. Do you remember whether or not Mr. Goettman gave you that paper? A. I don't remember.

Q. You carried on the negotiations on behalf of the Equitable Surety Company concerning the deposit of securities to indemnify it against loss on its bond referred to in this certificate here, did you not? A. Yes, the matters passed through my office and were submitted to the St. Louis Office, but I handled whatever securities or indemnities were given and then I also handled this and submitted it (referring to Exhibit"A)".

Witness was asked the purpose of having this stock deposited by Mr. Albert Carry, and answered as follows:—

"A. O, my understanding was that parties interested desired to substitute the stock for certain other indemnities or collaterals which the company held on the bond.

Q. Do you know whether or not that was by reason of the fact that assignment had been made to the Summit Oil & Gas Company and that this stock was to be substituted——. A. (Interrupting.) I don't know that to be the case.

Q. Did this company consent to any assignment?

Mr. Marshall: Now unless the witness knows I request that he so state.

A. Assignment—the company consent to assignments to the Summit Oil & Gas Company?

Q. Yes, sir. A. The company consented to some assign-
66 ments as I remember it to the Summit Oil & Gas Company.

Q. Then this stock was deposited for the purpose of indemnifying the Equitable Surety Company against loss on —— by reason of the assignment to the Summit Oil & Gas Company?

Mr. Marshall: Objected to as leading.

The Court: Objection sustained. That goes out.

Mr. Bradley: Exception. (Reading.)

Q. (Continuing:) And to relieve the other indemnitors?

Mr. Marshall: Leading and argumentative.

Mr. Marshall: I take it that goes out along with the other question.

Mr. Bradley (reading):

Q. Is that the fact or not? A. I don't know. I just know that this was offered as a substitute for some other indemnities or collaterals that the company may have held.

Q. That is all. And was so accepted?

Mr. Marshall: I object to that question as calling for a conclusion; the matter has already been asked of witness.

The Court: Objection sustained.

Mr. Bradley: I submit we have the right to ask the witness what was the purpose of having it done.

The Court: I cannot see that the purpose of these parties independent of any negotiations with Mr. Carry could be relevant.

Mr. Bradley: The purpose of what?

The Court: That the purposes of the Equitable Surety Company could be relative, unless it was disclosed to Mr. Carry. I mean there what they had in their mind.

Mr. Bradley: I propose to connect Mr. Carry up. If I do not, of course it will be subject to that objection.

67 The Court: You object to that on page 27 on the ground it is leading?

Mr. Marshall: Yes, and argumentative.

The Court: Overrule the objection.

Mr. Marshall: Exception.

I understood your Honor had already ruled that out before. That was a matter your Honor passed on on some preceding case where

the same question was presented, where he said he thought it was accepted.

The Court: On the ground that he did not show he had knowledge of it.

Mr. Marshall: Your Honor will allow an exception then to that."

On cross-examination, witness testified that at the time Plaintiff's Exhibit "A" was shown to him, as stated in his direct examination, his office was in Kansas City and the home office of the Equitable Surety Company was in St. Louis; that witness understood that the home office had approved the assignment but witness did not have the final say as to whether it (Meaning the securities described in Plaintiff's Exhibit "A") should be accepted or whether it should not be accepted; that this was for the home office. Witness carried on the negotiations looking toward the substitution of that for other indemnities or collaterals, but does not know whether such substitution was ever made or whether the Equitable Surety Company still has the original collaterals that were deposited with it. (R. Vol. 3, p. 124); witness does not know what the home office finally did because the certificate was sent on to St. Louis. (R. Vol. 3, p. 130).

68 At the time the bond was given by the Equitable Surety Company, certain collaterals were obtained by that company. (R. Vol. 3, p. 134), whereupon the witness was interrogated and answered as follows:

"Q. And these particular securities referred to in Plaintiff's Exhibit "A" were to be substituted in place of the collaterals already in the hands of the Equitable Surety Company, which were to be released; that is correct, isn't it? A. Yes, but that was at a later date.

Q. Yes, after the bond had been given of course? A. A subsequent date, yes.

Q. Yes, a subsequent date. Now were those original collaterals or securities ever released to your knowledge? A. I don't know. (R. Vol. 3, p-. 134, 135).

C. E. Vandevoort, of lawful age, duly sworn, was produced by the plaintiff and testified that he was President of the Pawnee National Bank, Pawnee, Oklahoma, and engaged in farming and banking; that he was present in the office of the Equitable Surety Company in Kansas City on the 18th day of December, 1913 and saw Mr. Goettman deliver the certificate showing the deposit of certain securities by Albert Carry, signed by Mr. McKee, as Cashier of the defendant bank, Plaintiff's Exhibit "A," to Mr. Van Buren, Vice-President of the Equitable Surety Company, Mr. Vandevoort further testified that he saw no other paper delivered to Mr. Van Buren. (R. Vol. 3, pp. 139, 140.)

HENRY H. MCKEE, recalled, produced five powers of attorney signed in blank by Albert Carry and left with him when the stock mentioned in Plaintiff's Exhibit "A" was deposited with the defendant bank in order that the stock could be transferred if necessary. Witness further stated that Mr. Carry told him that
69 he had an interest in the stock of the Summit Oil & Gas Company, that he was a stockholder in the said Company and had an interest as a stockholder.

A. W. HURLEY, called on behalf of plaintiff, testified on direct examination as follows:

That he was a clerk in the Indian Service of the United States Government for Seventeen years, and was connected with the Osage Agency as Agency Clerk and Disbursing Officer. (R. Vol. 2, p. 32); that he knows of the filing of the lease between M. A. Brast and the Summit Oil Company and that he had the lease in question prepared (R. Vol. 2, pp. 33, 34); asked by counsel for plaintiff what connection said witness had with the giving of any bond to the Government as security for the drilling of "those wells by Mr. Brast," witness answered, "I became personally an indemnitor to the bonding company." Witness was further interrogated and answered as follows:

"Q. Did the bonding company require Mr. Brast to give indemnified security before it would become surety on the bond? A. I did; the company did (R. Vol. 2, pp. 38, 39.)

That at the time of its execution, the witness had no interest in the contract between Mr. Brast and the Government, but acquired an interest in Brast's lease afterward. That at the time witness became an indemnitor to the Equitable Surety Company, on the bond of Brast, witness had no interest in Brast's leases but acquired an interest therein in the same fall, in 1913 and acquired his interest prior to the assignment of leases, by Brast, to the Summit Oil & Gas Company. (R. Vol. 2, p. 40.)

70 That sometime in September or in the early part of October, M. A. Brast obtained through the Indian Office a lease on Thirty-two (32) tracts of land in Osage County for the production of Oil, in October, 1913, Sixteen tracts (16) of the aforesaid thirty-two tracts were assigned by Brast to the Summit Oil & Gas Company (R. Vol. 3, p. 154½).

A. W. HURLEY, recalled, testified that he was present on the 18th day of December 1913 in the office of the Equitable Surety Company in Kansas City and saw Mr. Goettman give Plaintiff's Exhibit "A" to Mr. Van Buren and that the certificate was tendered as indemnity to obtain the consent of the plaintiff to the assignment of the Brast leases to the Summit Oil & Gas Company and that no other paper was delivered to Mr. Van Buren by Goettman or anyone else.

On cross-examination, witness testified that he had never been connected in any way with the Equitable Surety Company (R. Vol. 4, p. 192); that his connection with the Indian Service terminated in May, 1909 (R. Vol. 4, p. 193); that at the time when Brast obtained his lease, witness had no interest in the lease, but there was

an agreement that he would have an interest in it. (R. Vol. 4, p. 194); that "When the matter of obtaining this bond from the Equitable Surety Company came up, in view of the interest which I was to get, I, with others, went with Mr. Brast to the office of the Equitable Surety Company where an indemnity was required by the Equitable Surety Company before the Equitable Surety Company would write the bond"; This was the original bond given by the Equitable Surety Company in the sum of Ninety-six Thousand Dollars ($96,000.00), to enable Brast to get those leases from the United States Government.

71 The others, to whom witness referred as having gone with him about procuring the Equitable Surety Company to execute the bond for Brast, were Mr. Brast, Mr. Goettman, R. L. Hall, C. E. Vandervoort, John L. Bird and D. M. Close. These persons and witness went to the office of the Equitable Surety Company and deposited with said Company, certain collaterals besides an indemnifying bond, and upon that being done, the Equitable Surety Company executed the bond, this was sometime in October, 1913; the collateral deposited with the Equitable Surety Company was bank stock; "We were in Kansas City and the demand came unexpectedly, and we placed that bank stock that was valued at Thirty-five Thousand Dollars ($35,000.00) which was substituted after we got home with stock of the Citizens' National Bank of Pawhuska, Oklahoma." The stock of the Citizens' National Bank of Pawhuska was substituted for the stock which was originally deposited. (R. Vol. 4, pp. 194, 195, 196).

Whereupon the witness was interrogated and answered as follows:

"Q. Where is that bank stock of the Citizens' National Bank of Pawhuska now? A. I don't know, Mr. Marshall.

Q. Has it ever been returned to you, your part of it? A. A part of it has been substituted since that with Pawnee National Bank stock, but just the number of shares substituted I could not state positively, but it was substituted at the same value and the same number of shares.

Q. That was done at your request? A. At our request.

Q. Then if I understand you, as far as you know this bank stock of the bank of Pawhuska and the Pawnee bank stock is still in the custody of the Equitable Surety Company? A. Yes, sir.

72 Q. The Equitable Surety Company, if I understood you on direct examination, had declined to write this bond for Mr. Brast until this collateral which you have mentioned was deposited by you gentlemen? A. Yes, sir.

Q. By Mr. Hall, Mr. Van Buren, Mr. Bird, and whoever else it was you mentioned a moment ago? A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. You gentlemen afterwards endeavored to get back your original deposit with the Equitable Surety Company and substitute therefor other security, did you not?

Mr. Bradley: What other security?

The Witness: I have answered that we did get back part of it and substituted.

By Mr. Marshall:

Q. Now, after that particular substitution, of the Pawnee bank stock, isn't it a fact that you made efforts to withdraw your securities and substitute other securities in place thereof? A. I don't remember making any such effort as that as to the value of this stock in question that was put up, as shown by the certificate of deposit.

Q. That is the stock that is indicated by this certificate of deposit signed by Mr. McKee? A. Yes, sir. (R. Vol. 4, pp. 197, 198, 199.)

Witness was asked the following question (R. Vol. 4, pp. 202, 203):

"Q. With reference to that stock, isn't it a fact that you gentlemen, you and Mr. Hall and Mr. Vandervoort and the others
73 whose names you mentioned, Mr. Close, and Mr. Bird, entered into an agreement with the Summit Oil & Gas Company that the Summit Oil & Gas Company was to furnish certain stocks or securities and that those stocks were to be placed with the Equitable Surety Company and a proportionate value of the stocks which you already had on deposit with the Equitable Surety Company released by that company? In other words, that the stocks mentioned in this certificate of deposit were to be substituted for securities which the Equitable Surety Company was holding?"

and replied as follows (R. Vol. 4, p. 203):

"A. There was an agreement by which the Summit Oil & Gas Company was to take over 16 pieces and supply the indemnity to substitute our-. In other words, they were to supply indemnifying securities to be substituted for those."

Q. In other words, they were to supply indemnifying securities to be substituted for those which you hac upon deposit with the Equitable Surety Company? Is that correct? A. Yes, sir.

Q. Was that substitution ever made? A. No, sir. That is, not to the extent of letting our stock down.

Q. Your stock is still in the custody of the Equitable Surety Company? A. It is still held.

Q. Isn't it a fact that the Equitable Surety Company refused and declined to that substitution? A. No, sir.

74 Q. To the acceptance of that substitution? A. No sir.

Q. You say that is not a fact? A. It is not a fact so far as I know.

Counsel for defendants then produced certain letters addressed to C. E. Goettman and signed by the witness which were identified by the witness and marked for identification. All of these letters are set out in extenso in defendant's case. Witness was shown one of said letters dated February 5, 1914 and being interrogated in reference thereto, testified that the collateral therein referred to as having been submitted in substitution for that submitted by the Citizens's National Bank was the collateral mentioned in Plaintiff's Exhibit "A";

(R. Vol. 4, pp. 203 and 205); that the substitution referred to was never adjusted (R. Vol. 4, pp. 206, 208); that to the knowledge of witness, the Equitable Surety Company never determined the value of the securities mentioned in said Exhibit "A" and never released any of the securities deposited by the original indemnitors (R. Vol. 4, p. 207); that on the 14th day of February, 1914, the only real collateral accepted by plaintiff was that put up by witness and his associates and that the stock deposited by Carry was to be substituted for his but had never really been accepted in any amount. Concerning the letter dated May 29, 1914, witness testified that Mr. Goettman and Mr. Brast were the ones who had promised to aid in getting back bank stock which said letter request assistance in getting "jarred loose" at Kansas City, and that this promise had been made subsequent to the second alleged assignment (R. Vol. 4, p. 214).

Interrogated concerning his letter, dated January 27, 1916, witness testified that the persons referred to therein as "us fellows",
75 were himself and Mr. Vandervoort and Mr. Bird, and that the bank stock was the same stock deposited by the original indemnitors; that the persons who agreed to put bank stock in the hands of the Equitable Surety Company, to release this original collateral, were Brast and Goettman "representing the Summit Oil & Gas Company" (R. Vol. 4, p-. 214, 215).

Concerning his letter dated April 15, 1916, witness testified that the Bond Company, against which suit was to be instituted by the United States Attorney, was the Equitable Surety Company, and was asked and answered as follows:

"Q. Now, by a general calling on all the way around, let me ask you if you mean this: that the Equitable Surety Company would call on you, Bird and Vandervoort, and Mr. Hall and if there be another gentleman or other gentlemen, who were originally these indemnitors, and that then you would call on the persons who agreed to indemnify you, including the Summit Oil & Gas Company? A. I mean by that that there would be a general settling up.

Q. Is that the only answer you care to make to that question? A. Yes, sir" (R. Vol. 4, pp. 216, 217).

Witness testified that Albert Carry was not present in Tulsa at the meeting mentioned in the testimony of C. E. Vandevoort. Said meeting at Tulsa was in November, 1913 and witness testified he had never seen Albert Carry until he came to Washington to testify in this case (R. Vol. 4, p. 218).

On re-direct examination, witness was interrogated and answered as follows:

"Q. Mr. Hurley, you were shown a letter of December 3rd, 1913, in which you referred to a certificate of deposit sent by the
76 Summit Company, of $11,667. I believe you testified that was returned to the Summit Oil & Gas Company? A. Yes, sir.

Q. Well, when you returned it to the Summit Oil & Gas Company, to whom did you give it? A. To Mr. Goettman.

Q. In person? A. Yes, sir.

Q. Will you state the circumstances under which it was returned? A. Mr. Goettman and Mr. Brast called on me at the Citizens' National Bank at Pawhuska, Oklahoma. At that time, they stated that they needed this money referred to by this certificate of deposit in carrying on their business and agreed if I would let them have the certificate of deposit they would see that the Washington bank stock referred to in the certificate of deposit was placed in the hands of the Equitable Surety Company without delay and on that positive agreement, these gentlemen, Brast and Goettman being understood by me as being officers of the Summit Oil & Gas Company, I returned the certificate of deposit to them, to Mr. Goettman.

Q. Then, that was returned on the agreement, of the Summit Oil & Gas Company to place certain other securities, being the ones mentioned in the certificate of deposit, with the Equitable Surety Company? A. The return of this certificate of deposit was contingent upon their delivering physical possession of the Washington city bank stock described in the certificate of deposit to the Equitable Surety Company.

Q. Instead of delivering physical possession to the Equit-
77 able Surety Company they delivered the certificate that Mr. McKee, the cashier of the bank, setting forth that the stock was held and the purposes set forth in the certificate itself? A. The certificate was already in the hands of the Surety Company. They agreed in lieu of the certificate, they would deliver physical possession of the property.

Q. They never did that? A. They never did it." (R. Vol. 4, pp. 218, 219, 220.)

Mr. Hurley further said that the plaintiff required him and his associates, C. E. Vandervoort, Mr. Brast and Mr. Goettman, (R. Vol. *r*, p. 224) to consent to the assignment by Brast to the Summit Oil and Gas Company as a condition to its consent as surety. Witness testified that he never received any benefit from his interest in the sixteen (16) parcels of the original Brast lease assigned to the Summit Oil & Gas Company.

But witness retained a working interest in the 16 tracts assigned to the Summit Oil & Gas Company, by which he meant that he, individually, retained one-sixth of one-fourth interest in the production from said leases and that Vandervoort, Close, Bird, Hall and Brast retained the other Five-sixths (R. Vol. 4, p. 226).

On examination by Mr. Merillat, witness testified that the Osage national made a lease to Mr. Brast; that in order for Brast to obtain the lease of these 32 tracts, it was necessary for him to obtain a corporate surety, and he obtained the Equitable Surety Company; that before the Equitable Surety Company would go on Brast's bond, it required an indemnity, and witness and his associates furnished that indemnity, for which they obtained a one-fourth interest in whatever remained after the Osage nation was satisfied.

78 That subsequently it was desired to assign 16 of said 32 tracts to the Summit Oil & Gas Company and in order to make

this assignment, it was necessary to obtain the consent to the Equitable Surety Company; that said Surety Company required as a condition for giving its consent to said assignment, that the indemnitors on the original bond consent to the Equitable Surety Company remaining as surety, or consent to the assignment. That the original indemnitors, when applied to by the Summit Oil & Gas Company to give their consent to said assignment, required that the Summit Oil & Gas Company put up collateral; that Mr. Brast, Mr. Goettman and Mr. Close were not parties to this requirement as they were personal indemnitors on a personal indemnity bond, but the other indemnitors, including witness, required the Summit Oil & Gas Company to put up collateral, which it agreed to do in substitution for the collateral which had been put up by witness and the original indemnitors, except Brast, Goettman and Close. That the application for the assignment was made to the Equitable Surety Company by the Summit Oil & Gas Company through Brast and Goettman, who were the only people witness talked to about it as president of the Summit Oil & Gas Company, and that witness and Vandervoort, as interested parties, were present; this occurred at the office of the Equitable Surety Company in Kansas City (R. Vol. 4, pp. 227-231).

That the agreement that Brast would assign 16 of said parcels to the Summit Oil & Gas Company was first reached at Tulsa, and there were present witness, Brast, Goettman, Vandervoort, Alt and Weller (R. Vol. 4, p. 232). That no attempt was made at Tulsa to get the consent of the surety to the assignment, but witness, Vandervoort, Brast and Goettman went to Kansas City and saw Van Buren, Vice-President of the Equitable Surety Company.

79 The Witness: After the assignments were prepared and executed the parties named went to Kansas City to see the Equitable Surety Company in regard to consenting to the assignment. The Equitable Surety Company declined to consent to this assignment unless the original indemnitors would file with them their consent to remaining or consenting to the assignment, and we, Mr. Vandevoort, Mr. Bird and myself refused to consent to the Surety Company remaining or consenting to the assignment unless the Summit Oil & Gas Company would put up indemnity in the shape of collateral to substitute collateral we had up on the sixteen (16) pieces. The officers, as I knew them, of the Summit Oil & Gas Company, had notice of this prior, and to meet that requirement delivered to Mr. Van Buren the certificate of the Washington City Bank—I have forgotten the name of it—covering the securities in evidence here.

By Mr. Merillat:

Q. Was there any other agreement except as was embodied in this certificate of deposit entered into as to what should be done? A. There was absolute agreement on the part of Mr. Brast and Mr. Goettman to deliver that stock to the Equitable Surety Company. Mr. Van Buren agreed, so far as he could, to accept this stock for

its market value and to release our security in the same amount, and on that assurance we agreed to this consent.

Q. Now, up to that time had the Equitable Surety Company signed this assignment? A. No, sir.

Q. After this agreement was made did it sign the assignment? A. Yes, sir.

Q. Now, at that time was this assignment of the National
80 Capital Bank in Kansas City? A. You mean the certificate?

Q. This certificate of deposit, was it actually in Kansas City? A. Yes, sir.

Witness further testified that Goettman, on the 18th day of December, 1913, delivered the certificate of the defendant bank to Mr. Van Buren, Vice-President of the plaintiff corporation, and assured him that the stock itself would be sent to the plaintiff to substitute for stock of equal value previously deposited by Hurley and his associates, and that no agreement, as to the value of the Washington bank stock had ever been reached between the parties interested, that is, between the Equitable Surety Company and witness and his associates; that two things were to occur precedent to the turning over to witness and his associates of their securities. (R. Vol. 4, p. 238).

On re-cross examination the witness testified as follows:

Q. As I understand your answer to the question propounded by Mr. Merillat, Mr. Van Buren, representing the Equitable Surety Company, declined to consent to this assignment from Mr. Brast to the Summit Oil & Gas Company unless you and the other original indemnitors agreed to remain liable upon your indemnification? A. Yes, sir.

Q. And you and the other indemnitors requires of the representatives of the Summit Oil & Gas Company that they furnish certain securities which were to be used to release proportionately the securities which you had with the Equitable Surety Company at that time? A. They were to be filed to indemnify the
81 Equitable Surety Company and to be substituted for the stock which we had up so far as the market value would admit.

Q. They were to be substituted pro rata for the stock you had up at that time? A. Yes, sir.

Q. That was the requirement made by you and the other indemnitors?

By Mr. Marshall:

Q. That is correct, is it? A. They were to indemnify the Surety Company to what would seem to us a sufficient amount to protect us on the sixteen (16) pieces. They submitted this certificate as that indemnity and to be substituted later on.

Q. The object of it was to protect you, the indemnitors? A. That was my idea.

Q. So you could get your stock back? A. The idea was to protect us in our indemnity.

Q. If I recollect the testimony in this case, there were 32 tracts of this original lease to Brast. Is that correct? A. Yes, sir.

Q. What happened to the other 16? Were they assigned? A. There were eight of them assigned to other parties.

Q. Did you and the other indemnitors consent to that assignment? A. Yes, sir.

Q. And how about the remaining eight? A. The remaining eight were assigned later on to the Summit Oil & Gas Company. The first eight was assigned to John H. Markham, Junior, of Tulsa, Oklahoma, and the Finance Oil & Gas Company.

82 Mr. Marshall: This original indemnity put up by you and these other gentlemen covered all of these 32 parcels? A. Yes, sir.

Mr. Marshall: That is all. Well, there is one question I want to ask Mr. Hurley that I am not clear about.

Q. When this certificate of deposit was presented, as you testified in Kansas City, was Mr. Weller present at that time? A. No, sir. (R. Vol. 4, pp. 240, 241.)

JOSEPH I. WELLER, a witness of lawful age, produced by the plaintiff and duly sworn, testified that he was at one time president of the Summit Oil & Gas Company. That he was not its president at the time he testified, and that he did not know who was president; thinks the company went out of existence two or more years ago; is not sure he was its last president, but thinks he was, and does not know of anyone having been elected to succeed him in office (R. Vol. 4, pp. 242, 243). That according to the recollection of witness he became a stockholder in the Summit Oil & Gas Company about 1913; the company was wiped out some time ago and witness

83 does not know when that happened, but continued to be a stockholder throughout its life (R. Vol. 4, p. 246).

Asked when Mr. Albert Carry became one of the stockholders of said Company, witness said that his recollection was that Carry was a stockholder in 1913, (R. Vol. 4, p. 247) and also thinks that Mr. Carry became a stockholder prior to December 15, 1913. (R. Vol. 4, p. 249.)

Witness was shown Plaintiff's Exhibit "A" and asked if he was present in the National Capital Bank on December 15, 1913 when this certificate or receipt of the Bank was executed by Mr. McKee, and answered that he was present when some certificates were signed, or receipts, but whether it was this particular certificate, he could not say (R. Vol. 4, pp. 251, 252). Does not remember how many certificates or receipts were signed that day by McKee—whether there were two, three, or four, and does not remember that McKee handed them to Mr. Carry. Mr. Goettman was present; he was Secretary of the Summit Oil & Gas Company at that time (R. Vol. 4, p. 252), and that there were just four people present at this meeting; the witness then testified that at the time the receipt was executed by Mr. McKee nothing was said by the latter except he handed the receipt to Mr. Carry for him to read: (R. Vol. 4, p. 252).

On direct examination by Mr. Merillat, the witness testified as follows:

Q. Was there anything said as to the purpose for which this certificate of deposit was required, and if so, by whom? A. I don't recollect whether there was anything said at that meeting at the bank, but there was something said either there or prior to
84 that time, in order to obtain the loan of these certificates or that stock from Mr. Carry.

Q. What was said to him as to why it was necessary to have him put up these stock certificates?

Mr. Marshall: We object to that question because it assumes something was said to him that it was necessary. We submit the question ought to be: What was said to him about the matter?

The Witness: I don't recall there was anything said at this particular meeting. I think the matter came up prior to that time, and, as I recollect it, these leases were bought or taken over by Mr. Brast back in July, I think of 1913. I think that is when the business took place out in the Osage Nation, and later on, in December, the question came up of Mr. Hurley's wanting to draw down his bond that he had up, and the matter came up before the Board of Directors of the Summit Oil & Gas Company, for the Summit Company to relieve Mr. Hurley and his partners from the securities placed for the sixteen (16) parcels, and the Summit Company not being able financially to satisfy Mr. Hurley and his partners, they borrowed the certificates of stock from Mr. Carry. Mr. Carry loaned them to the Summit Oil & Gas Company, and it was the purpose of Mr. Goettman's visit to Washington at that time to get the stock. Whether anything was said at that time at the bank or not, I don't know.

Q. Mr. Carry at that time was a stockholder in the Summit Oil & Gas Company? A. Yes, sir.

Q. A large stockholder? A. I don't remember the amount, but I would say he was a large stockholder.

85 Q. And was the Summit Company at that time desirous of obtaining an assignment of these leases, of these Brast leases put it,—the Summit Company? A. My recollection is that the assignment had been made a long time prior to that and that Mr. Hurley and his partners wanted to draw down their stock and wanted the Summit Company to make good, and the Summit Company, in order to make good, borrowed the stocks from Mr. Carry.

Q. Wherein did the Equitable come in? Had these assignments been perfected? A. My recollection was it was perfected a long time prior to the time that certificate was made out in December.

Q. At that time did you not know that in order that these assignments might meet with the approval of the Secretary of the Interior, it would be necessary to obtain some writing or consent from the Equitable Surety Company in order to put the matter through? A. No; I cannot say that I was familiar with that.

Q. What was said to Mr. Carry or by him as to why he should make this loan and agree to these certificates and agree to this writing signed by Mr. McKee? A. Back there in 1913, we all imagined that we were all going to be millionaires out of this oil territory and

it was painted to us in very glowing words by the gentlemen in Oklahoma, and we asked Mr. Carry to put up the stock. We thought Mr. Carry would take the chance and we were all going to make a great deal of money, which we did not.

Q. What was the purpose of his putting it up? A. To relieve Mr. Hurley and his associates so they could draw down their bonds and stock.

86 Q. And nothing was said as to who it was, at the Equitable Surety Company in connection with the matter? A. I have no recollection it was. My recollection is Mr. Hurley and his associates were anxious to draw down their stocks and bonds. I don't understand there was any request coming from a surety company, because the surety company must have been satisfied with the Hurley certificate before they went on the bond.

Q. This was on the Brast bond? A. That is the bond I am speaking of.

Q. That is on the Brast leases. That is the only lease I am speaking of. Q. In connection with the assignment did you not know and understand that there would something further have to be done to effect an assignment? A. I just answered that question before, that I did not.

Q. Did Mr. Goettman—Who was the paper to be sent to, if you know? A. My recollection is that Mr. Goettman stated that he was to take that paper on to St. Louis, to the Bonding Company; so Mr. Hurley and his associates could draw down their stocks and bonds.

Q. And to whom was the paper to be delivered? A. I should judge it was to be delivered to the bonding company if they were to draw down their stock and bond. I don't remember the statement made.

Q. What bonding company? A. I don't remember. I think it was the St. Louis Surety Company.

87 Q. Wasn't it the company that was the surety on the Brast bond and in connection with these thirty-two (32) leases in question? A. Oh, I should judge that it was. There was only one bond that I knew, that was on the leases. I know of no other bond.

Q. Was Mr. Carry at that time a Director of the Summit Oil & Gas Company? A. At what time?

Q. On December 15, 1913. A. I think that he was. The record will show. I think that he was, but I am not positive; but I think that he was.

Q. Did you understand that the purpose was in order to perfect an agreement and consummate an arrangement whereby the Summit Company would take over certain of these Brast leases? A. I don't understand it was to perfect any agreement, Mr. Merillat. I have stated the condition, and now I wish to reiterate very clearly that the thought I now have in mind and what impressed me then was that Mr. Hurley and his associates were anxious to draw down their securities, and it was at their request. It was issued so that they could draw down their securities.

Q. Didn't you understand it was being done in order to consummate a deal that had been made? A. Why no, I wouldn't think so

then or now, because if the bonding company had been satisfied in the first instance, it certainly would have been in the second.

Q. Why then was the paper to go to the Equitable Company? A. For the third time, I think, Mr. Merillat, I say that it went to them for the purpose of releasing the bonds and stock held
88 by the Surety Company and owned by Mr. Hurley and his associates.

Q. How long were they to hold that paper? A. One year. (R. Vol. 4, pp. 258, 259.)

On cross-examination by Mr. Marshall, witness testified, after he had examined a certain paper attached to the Intervening Petition herein of Albert Carry, that he remembered that the Summit Oil & Gas Company had authorized the execution of such a paper and that the insert therein, in pen and ink, appeared to the witness to be in the handwriting of Mr. Goettman, with whose handwriting witness was familiar. (R. Vol. 4, pp. 261-264.)

ALBERT CARRY, intervening defendant, herein, of lawful age, and duly sworn, was called as a witness by the intervenor, William Dall, and on examination by Mr. Merillat, Counsel for Dall, testified, as part of plaintiff'- case, that the receipt issued by Mr. McKee for the stock deposited by the witness, same being attached to plaintiff's bill and marked "Plaintiff's Exhibit "A," was issued in his presence by Mr. McKee to Mr. Goettman, but that he never saw either copy of same until it was exhibited to him on the stand. Witness said that the receipt or certificate was to be taken by Goettman to Kansas City or Oklahoma.

M. A. BRAST, a witness of lawful age, duly sworn and produced by the plaintiff, testified that he was a Contractor and oil contractor; that he was President of the Summit Oil & Gas Company in 1913 and 1914; that he first met Albert Carry, intervening defendant, in Charlestown, W. Va. in September or October of 1913; that Carry was a large owner of the stock of the Summit Oil & Gas Company, having bought more than one-fourth the entire stock of the company.

89 Counsel for plaintiff then called upon counsel for defendants to produce the records of the Summit Oil & Gas Company and the call was answered by the production of the minute book. Which counsel for defendants stated was the only record of the Summit Oil & Gas Company which they had in their possession. Witness said he and Carry often discussed the business of the Summit Oil & Gas Company. Counsel for defendants admitted that the book produced on call of plaintiff's counsel was a correct record of the proceedings of the Summit Oil & Gas Company. Thereupon, Mr. Brast was excused to be recalled.

CHARLES E. GOETTMAN, a witness of lawful age, was produced by the plaintiff, duly sworn and testified that he was Secretary of the Summit Oil & Gas Company in 1913; that he was present at the Na-

tional Capital Bank of Washington on the 15th day of December, 1913, when Mr. Carry, Mr. Weller and Mr. McKee were also present; that the purpose of the meeting was to get some stocks of Mr. Carry's to substitute as collateral for securities previously put up by Hurley and his associates as indemnity on the original bond of Brast. Witness said he did not get the stock, but identified the receipt previously offered in evidence and marked "Plaintiff's Exhibit No. Eight," the same being Plaintiff's Exhibit "A" attached to the original bill.

"Q. I show you a paper that has been previously offered in evidence and ask you if you ever saw that before, and if so, where?

(Exhibiting to witness paper which had previously been marked as Plaintiff's Exhibit No. 8.)

The Witness: I saw that at that meeting we had at the bank.

Q. Did you have that in your possession on that occasion? A. Yes sir.

90 Q. How many of these were there; were there any more certificates, duplicates of this at that time? A. Well, I don't know as to that, as to how many there were. I suppose there were copies. There would be a copy or two.

Q. How many did you see, do you remember? A. I saw one. One was handed to me.

Q. Who handed it to you? A. Mr. McKee, as I remember.

Q. You don't remember whether or not Mr. Carry handed it to you? A. No, I do not. I would not say for certain who did hand it to me. It was handed to me there at the bank at that time.

Q. Do you recall having told me in front of the courthouse here the day this case was called for trial and was not tried, and you went back to West Virginia, that you were handed this by Mr. Carry? A. No, sir, I do not recall that.

Q. Do you recall talking to me about it? A. I remember you said something about — and I told you then I thought it was Mr. McKee.

Q. You don't remember telling me on the occasion Mr. Brast, Mr. Hurley and I walked out the corridor of this court and stood out on the curbstone, that this certificate of stock was handed you by Mr. Carry? A. No, sir.

Q. Did you receive any instructions from anybody as to what you were to do with this? A. Yes, sir.

91 Q. From whom? A. From several parties.

Q. Well, from whom did you receive instructions on that occasion? A. From Mr. Weller and Mr. Carry and from Mr. McKee.

Q. What did Mr. Carry say to you? What instructions did he give you? A. Well, I don't know as they were just any particular instructions given. It was a matter of taking this certificate out to Kansas City and meeting Mr. Hurley and Mr. Vandevoort and the Surety Company representative, and substituting enough of this collateral to equal $17,500.

Q. What surety company? A. The Equitable Surety Company.

Q. You were to substitute this collateral mentioned in this certificate? A. Yes, sir.

Q. But you did not have the collateral with you, did you? A. No, sir.

Q. What did you do with this certificate when you got to Kansas City? A. I turned that over to Mr. Van Buren.

Q. Who told you to turn it over to Mr. Van Buren? A. Mr. Hurley.

Q. Who told you to take it out to Kansas City? A. Mr. Hurley.

Q. When did Mr. Hurley tell you that? A. Oh, we had different correspondence about the matter.

Mr. Bradley: Then, I object and call for the correspondence if you have any.

92 Mr. Marshall: It is already here in the record.

The Court: He is your own witness, Mr. Bradley, and you have asked him about this. I don't see how you could object to this.

By Mr. Bradley:

Q. You say Mr. Carry told you and gave you some instructions about this certificate of deposit? A. No, sir. He did not give me any instructions.

Q. You just said that he did. A. No, I said in negotiating and talking the matter over. The truth of the matter is that Mr. Hurley was the moving spirit at that end and I was at this end, and the purpose of it all was to substitute collateral and take down the original collateral put up by Mr. Hurley on that bond.

Q. What interest did you have in the original collateral put up by Mr. Hurley? A. I did not have any."

Witness testified that the only interest he had in the original collateral put up by Mr. Hurley and his associates was in having it taken down was because of an agreement made with Hurley, Bird, Vandevoort and Hall.

Thereupon, the following ensued:

Q. Will you state, Mr. Goettman, what was the purpose of the deposit of security with the National Capital Bank by Mr. Carry, and what reason there was for delivering that security to the Equitable Surety Company at St. Louis—at Kansas City? A. The purpose of it was to let Mr. Hurley, Mr. Vandevoort, and Mr. Hall and Mr. Bird take down certain Citizens' National Bank stock that they had deposited on the original bond given to the Equitable Surety Company.

93 Q. Why were they to be allowed to take it down at that time? A. Well, I don't know why they were to be allowed to take it down. Mr. Hurley was endeavoring to get it down. As matter of fact, the Equitable Surety Company did not let them take it down.

Mr. Bradley: That is a voluntary statement that the witness was not asked about.

The Court: Let it go out.

By Mr. Bradley:

Q. Had Mr. Hurley, Mr. Vandevoort and Mr. Bird surrendered any interests that they might have had in any of the leases that the Summit Oil & Gas Company had taken over from M. A. Brast at that time?

Mr. Marshall: One minute; that question is objected to—surrendered any interests, calls for a conclusion of the witness, or opinion. Certainly this testimony would indicate whatever surrender there was made was a matter of writing.

The Court: I think so.

Mr. Bradley: Your Honor sustains the objection?

Mr. Bradley: Exception.

Witness further testified, subject to objection and exception by defendant's attorneys, that the Summit Oil & Gas Company, West Virginia, placed the matter of the defense of the action brought in the United States District Court for the Western District of Oklahoma, in the hands of its attorney, but could not say that he ever heard the matter of the defense of this suit discussed in the presence of Mr. Carry; was not certain about that, but he had discussed it with Mr. Carry personally.

Whereupon, Charles H. Merillat, Esq., on behalf of the intervenor, William Dall, propounded certain questions to the witness,
94 and he testified that he came to Washington on December 15, 1913, to get some collateral from Albert Carry to take to Kansas City and substitute for Hurley's stock under agreement with Hurley, Vandevoort and others. The witness then testified that he went to Kansas City to see Mr. Van Buren, Vice-President of the Equitable Surety Company. Thereupon, the following questions were asked, and the following answers given:

Q. Didn't you want to obtain some consent of the Equitable Surety Company to the transfer of some oil and gas leases from Mr. Brast to the Summit Oil & Gas Company? A. The consent had already been given, so far as we know, but Mr. Hurley and Mr. Bird and Mr. Vandervoort and others, they wanted—they did not like to have—they did not like the idea of having their collateral up there and transferring their interest in these leases.

Q. Was the consent of the Equitable at that time given? A. No, sir; consent had not been given, but the assignment had been made.

Q. Now, let's get it clear then. There had been an assignment from Mr. Brast to the Summit Oil & Gas Company? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. In order to effectuate and consummate that assignment, it was necessary to get something from the Equitable Surety Company, wasn't it? A. Yes, sir.

Q. What? A. To get their consent.

95 Q. In writing? A. Well, I suppose. I don't know just what the conditions were. Mr. Hurley was looking after that.

Q. Did you not know at that time that you had to get a written consent of the surety before you could get the assignment approved by the Secretary of the Interior? A. Well, I think there was something of that nature involved.

Q. Now, when you went—something of what nature involved? A. Of the consent of the Equitable Surety Company.

Q. You knew there were certain forms, did you not, governing the asignments in order to make a valid assignment? A. Yes, sir.

Q. And that they were Interior Department forms and requirements? A. Yes, sir.

Q. And you knew that that had to be evidenced by writing? didn't you? A. Well, I am not certain as to that, but I imagine it would have to be.

Q. And before you left for Kansas City and when you were up at the National Capital Bank, what discussion, if any, concerning this matter of these assignments, and what was necessary to be done, occurred at the National Capital Bank? A. Well, I took up this matter with Mr. Carry when I came; Mr. Hurley took it up with me and I took it up with Mr. Carry about getting some collateral.

Q. Why did you go to Mr. Carry? A. Because he had it.

96 Q. Why did you ask him to put up collateral rather than somebody else? A. Well, he seemed to have more of it than anybody else.

Q. And why did you think you could get his consent to it? A. Well, I did not know that I could when I first took the matter up. I took it up through Mr. Weller, and Mr. Weller took it up with Mr. Carry.

Q. In your presence? A. No, not in my presence.

Q. What did you say to Mr. Weller? What interest did Mr. Weller have in the matter ? A. He is a stockholder in the Summit Oil & Gas Company.

Q. What did you say to Mr. Weller as to what was necessary to be done or as to why you had come to Washington?

Mr. Marshall: To Mr. Weller?

Mr. Merillat: Yes, to Mr. Weller.

Mr. Marshall: We object.

Mr. Merillat: He said Mr. Weller took it up with Mr. Carry.

Mr. Marshall: He said he was not there.

The Court: How has he shown his connection between Mr. Weller and Mr. Carry?

Mr. Merillat: What connection was there between Mr. Weller and Mr. Carry?

The Witness: Well, I don't know what the connection was. They always came over there together, they lived here in Washington and both were interested in the Summit Oil & Gas Company.

97 Q. Did you know that Mr. Weller had been the broker and the attorney at various times for Mr. Carry? A. No, sir.

Witness testified that the certificate or receipt of the National Capital Bank was handed to him in the Bank; that it was drafted while witness was there and he thinks it was drafted back in the Bank and

after they got through they handed it to him. He did not remember who was actually present but Mr. Carry, Mr. Weller and witness were present at the time. Witness did not see the paper drafted; it was drafted back in the Bank and witness was out in the lobby, and Mr. Carry was out in the lobby with the witness. Asked what he discussed with Mr. Carry at this time as to what he was to do in Kansas City and what, if any, paper he was to get signed there, witness answered: "Well, I took up this matter of substituting this stock for what these other parties had to pay originally."

Q. Did you take up the matter of getting the consent of the Equitable Surety Company to the assignment? A. I did not.

Q. Did you know that it had to assign?

A. Not at that time, I did not. That was a matter that came up when we got out there. (R. Vol. 5, pp. 311-313.)

Q. What authority did Mr. Carry give you when you left Washington to go to Kansas City? A. He did not give me any authority other than the certificate of deposit. Mr. Merillat thereupon quoted the certificate, and asked the witness if he didn't know that the Equitable Surety Company had to be answered when he went to Kansas City. Whereupon witness answered "Why certainly." If this stock was substituted it would go up in place of what had already been put up by these other parties.

98 The following questions and answers then ensued:

Q. Was there anything said as to how you were to secure the Equitable Surety Company or why you were to secure the Equitable Surety Company? (R. Vol. 5, p. 314.) A. Well, as I understood it, if the Equitable Surety Company would agree to this substitution then this was to be in lieu, of course, of what was up there of Hurley's and Vandervoort's and Bird's stock.

Witness thereafter testified that at the time he was in the National Capital Bank, on December 15, 1913, that he knew there would have to be obtained the written consent on the part of the plaintiff before the assignment of the leases from Brast to the Summit Oil & Gas Company could be approved by the Interior Department, under the rules and regulations of the United States Government; that no such consent had been given up to that time, and that no discussion occurred at the meeting of the National Capital Bank as to the necessity of this consent, in writing, to be obtained.

Q. Now, when you went to Kansas City, didn't you go down there then for the purpose of getting this written consent? A. No, sir.

Q. Well, why was your trip—how did you expect to get that consent in writing? A. Mr. Hurley had advised me that if I got this collateral. this collateral to the extent of $17,500. and would come down to Kansas City and meet the representative of the Equitable Surety Company, that he would be permitted to take down his

99 pro rata of the stock that was up on this bond and that it would expedite the matter of the assignment and everything else.

Q. Expedite how? A. I don't know as to that. He seemed to know how to get matters through out there. Nobody could do anything, and as a matter of fact, it was a hard drowd to deal with.

Q. Now, as I understand it, you were to bring out some collateral? A. I was to bring out collateral or this certificate.

Q. Did you take out the collateral? A. No, sir.

Q. Did that question arise as to where the collateral was? A. Yes, sir.

Q. And any conversation concerning the collateral, its being put up? A. Yes, sir.

Q. What? A. Mr. Van Buren was acting—he would not agree to substitute it but he would investigate it and see the value of it.

Q. And was there anything said with respect to the Equitable Surety Company having the securities themselves? A. There was not anything said at that time, no, sir. (R. Vol. 5, pp. 315-316.)

Witness further testified that he did not see any papers signed by the Equitable Surety Company that day; that he brought no papers back with him. The following question was then asked:

Q. Now, can you tell me just what Mr. Carry said to you in the way of what authorization he was giving you in your pro-
100 ceedings in Kansas City? A. The only authority I had was to carry that paper out there and deliver it to Mr. Hurley, that certificate of deposit. (R. Vol. 5, p. 317.)

Q. Was Mr. Hurley an officer in any way in the Summit Oil & Gas Company? A. No, sir, he was the attorney, in fact, for us in Oklahoma.

Q. For whom? A. For the Summit Oil & Gas Company.

Q. Was he a stockholder at that time? A. No, sir.

Q. In the Summit Oil & Gas Company? A. No, sir.

Q. He was representing the Summit Oil & Gas Company in whatever did take place with Mr. Van Buren out there? A. Mr. Hurley seemed to know the man pretty well, and he is the one who took charge of the negotiations.

Q. For whom did he have charge of the negotiations so far as concerned Mr. Van Buren and the Equitable? A. Well, he was looking out for our interests and his too.

Q. By "our interest" you mean what? A. The Summit Oil & Gas Company.

Whereupon, the record of the proceedings and minutes of the meetings of the Stockholders and Directors of the Summit Oil & Gas Company were produced and identified by the witness. He thereupon testified that Albert Carry was elected a Director of the Summit Oil & Gas Company at the meeting of the Stockholders of the said Company on November 8, 1913; and rather thinks, but is not positive, that he, Mr. Carry, was personally present at
101 this meeting; that at this time arrangement had already been made to take over the assignment of certain leases from Brast.

"Q. When you left Charleston and came down from West Virginia, did you discuss at all with Mr. Carry or in Mr. Carry's presence, or did you discuss with Mr. Carry up in Charleston before you came here, or was there discussed in his presence, the matter of what the Secretary of the Interior had to do with the matter? A. Well, I imagine that——

Mr. Marshall: Now, we move to strike out any answer.

Mr. Merillat: I am not asking your imagination, but to the best of your knowledge and belief.

The Witness: As I have said heretofore, my mission to Washington was to get this stock, not for the benefit of the Equitable Surety Company but for Mr. Hurley and his associates.

By Mr. Merillat:

Q. That is not my question. A. Now, that is all I can testify to. That was my mission to Washington. Now if you ask me directly on these other matters, I will tell you.

Q. I am trying to be direct, Mr. Goettman.

The Court: Read the question.

(Thereupon the last question propounded by counsel to witness was read by the stenographer as follows:)

"Q. When you left Charleston and came down from West Virginia, did you discuss at all with Mr. Carry or in Mr. Carry's presence, or did you discuss with Mr. Carry up in Charleston before you came here, or was there discussed in his presence, the matter of what the Secretary of the Interior had to do with the matter?"

Mr. Marshall: We object to the question.

102 The Court: Of your own knowledge.

Mr. Marshall: We would like to have the record show——

The Witness: Of my own knowledge, I never discussed it.

Mr. Merillat: Now, I will reframe the question so as to meet any objection.

By Mr. Merillat:

Q. Were you present at any time when there was discussed with Mr. Carry or in Mr. Carry's presence, what the Secretary of the Interior had to do with the matter of the Summit Oil & Gas Company's taking over part of the Brast leases? A. I was not.

Mr. Marshall: We would like to have the record show we object to this line of examination upon the ground it is irrelevant to the issues here.

The Court: I overrule the objection.

Mr. Marshall: Note an exception.

The Court: Answer the question.

The Witness: I was not.

By Mr. Merillat:

Q. At no time then, either in Charleston or anywhere else, or in the National Capital Bank, was there any discussion in the presence of yourself and Mr. Carry of what the Secretary of the Interior had to do with these assignments? A. No, sir.

Q. What did you tell Mr. Carry? Did you know when you were

in Washington that you would have to meet Mr. Van Buren of the Equitable Surety Company when you went west? A. Yes.

Mr. Marshall: We object to what the witness knew.
Mr. Bell: He said yes.
Mr. Marshall: All right.
103 The Witness: Yes, sir.

By Mr. Merillat:

Q. Who was the official you were expecting to meet in Kansas City? A. Well, I wouldn't say exactly it was Mr. Van Buren. It was an official of the Equitable Surety Company and turned out to be Mr. Van Buren.

Q. And did you know when you were in Washington that something would have to be done to satisfy the Equitable Surety Company in order that matters could proceed? A. No, sir.

Q. Just what did you know or understand on that point when you were in Washington? A. I was to get Mr. Carry's stock to substitute for collateral that Mr. Hurley, Mr. Vandevoort and Mr. Bird had put up out there.

Q. And whom was that stock to be delivered to? A. That was all delivered to the Equitable Surety Company.

Q. Who was that to be delivered to, the stock you were to get? A. To *my* Hurley.

Q. Who was Mr. Carry's stock to be delivered to? A. I delivered it to him, that certificate of deposit, to Mr. Hurley, and he delivered it to Mr. Van Buren.

Q. The stock in question—it was to be delivered, in the event of substitution? A. It was to be delivered in the event of substitution—or the certificate of stock was to be delivered to the Equitable Surety Company in the event of substitution.

104 Q. And then Mr. Hurley was to act for all of you in the matter with the Equitable Surety Company. Is that right? A. No, he was not acting for all of us. He was endeavoring to get out from under.

Q. Why? A. Because he thought he was stuck. The leases began to look bad.

Q. Had there been any drilling at that time? A. Yes, sir.

Q. On these leases? A. No, not on these leases, but on the adjoining subdivision.

Q. Isn't it a fact at that time you folks were expecting to become millionaires by getting these assignments? A. Yes, sir, by leasing to that crowd out there we were.

Q. And was that the situation when you were here in Washingington at the National Capital Bank? A. I don't know as we were all thinking of being millionaires, but we had reason to think it was good because we were getting wires every day that so and so came in and there was such and such a showing.

Q. And it looked rosy to you? A. Yes, sir.

Q. When you left Washington for Kansas City? A. Well, I wouldn't say it looked rosy.

Q. Well, it looked loke a good business prospect, a good oil prospect, didn't it? A. Yes, sir.

Q. And you were anxious to get the assignment approved? A. Yes, sir.

105 Q. And that condition still continued when you reached Kansas City, didn't it? A. Yes, sir.

Q. And when you reached Kansas City you knew that something would have to be done with the representative of the Equitable Surety Company, didn't you? A. No, sir, not until after I got there.

Q. You saw that? A. After I reached there; yes sir.

Q. You knew it? A. Yes, sir.

Q. What obligation was there on Mr. Carry to put up stock to relieve Mr. Hurley? A. Why, they assigned 16 pieces to the Summit Oil & Gas Company.

Q. Who had assigned it? A. Brast; that meant Hurley, Vandevoort, Brast, and others; it was all the same interest. There were 32 pieces, and they originally put up $35,000. collateral, and they wanted the Summit Oil & Gas Company to substitute $17,500. or half of what they originally put up.

Q. Whatever benefit was to come from this part, was to go to whom? A. To the Summit Oil & Gas Company.

Q. And what obligation was there on Mr. Carry to let Mr. Hurley and the others get out from under? A. The Summit Oil & Gas Company——

Mr. Marshall: We object to that question; it calls for a conclusion of the witness—what obligation there was on Mr. Carry.

Mr. Merillat: It calls for a fact.

106 By Mr. Merillat:

Q. Why would Mr. Carry put up, or why did Mr. Carry put up, either a certificate of deposit, or did you expect him to put up stock, to let Mr. Hurley get out from under? A. Because the Summit Oil & Gas Company put up a bond to secure him.

Q. To secure who? A. Mr. Carry.

Q. And Mr. Carry on his part was to put up the stock to enable the Summit Oil & Gas Company to meet what was required? A. To meet Mr. Hurley's demand.

Q. In what way did the Equitable Surety Company figure in this? A. In the event of substitution. It would have been to secure the Equitable, but they refused to do it.

Q. Who acted in the negotiations with the Equitable? A. We were all acting.

Mr. Marshall: I move that the answer be striken out as not responsive.

The Court: It is Mr. Merillat's question.

By Mr. Merillat:

Q. Who acted in the negotiations with the Equitable? A. Mr. Hurley seemed to be the most active man.

Q. Who else was present? A. The man who represented the Equitable was Mr. Van Buren.

Q. Who else was present besides Mr. Hurley? A. Mr. Vandevoort.

Q. Who else? A. Myself and Mr. Hurley.

Q. In what capacity were you acting? A. I was acting as secretary of the Summit Oil & Gas Company.

107 Q. And did you hear what Mr. Hurley said to the Equitable? A. Yes, I heard some of the things he said.

Q. What did they try to get the Equitable to do? A. To substitute this stock for half of the collateral he had up, he and his crowd.

Q. Was anything said abut the consent of the Equitable to the assignment? A. Well, there may have been that too.

Q. What was said about the consent of the Equitable to the assignment? A. I just don't remember what all."

Q. The assignment, as to the Equitable consenting to this assignment to the Summit Oil & Gas Company? A. Mr. Hurley objected to having his stock held there as collateral on that original bond, and this assignment made to the Summit Oil & Gas Company without the Equitable would substitute this collateral of Mr. Carry's for half the collateral that they had up. That was the hitch out there.

Q. What was said as to Equitable consenting; what did the Equitable say? A. Mr. Van Buren would not agree to it.

Q. And did he later agree? A. Not that I know of.

Q. To give his consent? A. He consented to the assignment, but he never had any objection to that.

Q. When did he consent; had he consented to it when you arrived there? A. I just don't remember about that, whether he had or had not.

108 Q. Had his consent been given in writing when you arrived there? A. I don't know as it was.

Q. What was said then as to the consent; did they say they had not yet consented? A. I believe they said they had not consented, but they did not refuse any to consent to the assignment. Now, mark the difference; The Equitable never refused to consent to the assignment, but they did refuse to substitute this collateral for the collateral that was already up.

Q. Now, what did you say as to their consenting; did they say they had not yet consented to the assignment? A. At that time I don't know as they had.

Q. Did they consent that day that you were there?

Mr. Marshall: If that consent was evidenced in writing, we object to the question.

The Court: Objection sustained.

By Mr. Merillat:

Q. What did they say to you when you arrived there and first met Mr. Van Buren with reference to their consent? A. Well, there wasn't anything said about that at first. The controversy was over the substitution.

Q. Was there later something said about their consent? You said there wasn't a thing said at first. A. Later that matter was discussed.

Q. What was said on that point and by whom? A. Mr. Hurley objected, as I have stated, to the Equitable not substituting this collateral and letting him take down half of what they had up, and the Equitable, if they did not that day, but I don't remember,—immediately afterwards they did consent.

109 Q. Consent to what? A. To this assignment.

Q. What did they say; what discussion preceded their consent and how were they induced to consent? A. They were not induced other than on the original bond.

Q. How were they induced to remain on that original bond after the assignment was *pa*proved? How did you get their consent to continue on the original bond? A. They never had any objection to giving the consent and let the original bond stand."

Witness testified that the negotiations with the Equitable Surety Company were not concluded in his presence, but that he left Hurley and Vandevoort to continue their negotiations and kept in touch with the situation himself; that Hurley was acting for himself, to get out from under the original obligation, and was acting for the Summit Oil & Gas Company in the capacity of trying to expedite the matter of obtaining of the consent of the Interior Department, so that the Summit Oil & Gas Company could start its operation. The Summit Oil & Gas Company did not authorize Hurley to do anything, but he voluntarily helped to get the thing closed up as rapidly as possible. Witness testified that when he left Kansas City the matter was still open, and that nobody was left there to represent the Summit Oil & Gas Company in closing the matter.

Asked whether it was to close by itself, he answered: "Well, it was to close by itself. It was up to the Equitable to do something." That this was a matter for the Equitable, Mr. Hurley was insisting that the Equitable release his collateral and the Equitable would not do that and give the consent." (R. Vol. 5, pp. 336-337).

110 A. I went out there primarily to substitute this stock that we had here for Mr. Hurley's, and Mr. Hurley had wired me that at that time he would have the Equitable there, the Equitable representative there, and he would see that the consent was given at once, so it could be referred to the Interior Department and have the Interior Department approve it.

Q. When you got there, did the Equitable give its consent at once? A. The Equitable did not give its consent at once.

Q. And when you left? What did you do there to get them to

give their consent? What did you say to them to get them to give something they did refuse to do at once? A. I didn't say anything to them.

Q. Who said anything to them? A. Mr. Hurley kept insisting upon a substitution, and Mr. Van Buren said that he would take this certificate of deposit and inquire into the value of these stocks and would let him know later whether he would substitute.

Q. And when you left, was anything further said? A. Not that I remember of. There was a good deal said that day, but I don't remember all of it.

Q. Was there anything said about the securities this bank sent out? A. Mr. Hurley said that—Mr. Hurley told me that Mr. Van Buren had asked him, but I don't know as it was said that day,—Mr. Hurley told me afterwards, Mr. Hurley afterwards wrote me that Mr. Van Buren had asked him in the event they would substitute the stock whether Mr. Carry would be willing to send them out there.

Q. Was there anything at all said that day about the securities this bank sent out? A. No, sir, not that I remember.

111 Q. Now, when you left there, did you go away feeling and knowing that you had expedited the matter?

Mr. Marshall: We object to that.

The Court: Oh, yes; sustain the objection.

By Mr. Merillat:

Q. You went there to expedite something? A. Yes, sir.

Q. And that expedition was the consent of the surety, wasn't it? A. No, sir.

Thereupon the plaintiff offered in evidence and the Court admitted subject to the objection and exception of defendant to agreements both being identical in terms save and except that Plaintiff's Exhibit No. 11 which is in the following terms, set forth the parcels of land assigned by M. A. Brast to the Summit Oil & Gas Company of West Virginia, on the 2nd day of December, 1913, and Plaintiff's Exhibit No. 10 referred only to the parcel of land assigned by the said Brast to the said Summit Oil & Gas Company of West Virginia, on February 4, 1914.

During the examination of this witness the minutes and proceedings of the Stockholders and Directors of the Summit Oil & Gas Company were offered in evidence by the plaintiff, and admitted. These minutes and proceedings showed that Albert Carry was elected a member of the Board of Directors of the Summit Oil & Gas Company at a meeting of the—

112 During the examination of this witness the minutes and proceedings of the Stockholders and Directors of the Summit Oil & Gas Company were offered in evidence by the plaintiff, and admitted. These minutes and proceedings showed that Albert Carry was elected a member of the Board of Directors of the Summit Oil & Gas Company at a meeting of the Stockholders held on the 8th

day of December, 1913; that he was present at and participated in the deliberations and discussions and acts of the Board of Directors and of the Stockholders; that he could have known had he examined the minutes of a previous meeting of said Company, held on the same day he was elected to the Board, of the assignment by said Brast of said leases; that said minutes showed that suit had been brought on the bond of said Brast against the Equitable Surety Company, the Summit Oil & Gas Company and Brast.

On direct examination by Mr. Merillat witness testified that the question they were discussing in Kansas City was the substitution of one class of stock for another. (R. Vol. 5, p. 343). That
113 the Equitable Surety Company never questioned giving consent to this assignment so long as the original bond was in force; that the only question troubling them out there was the substitution of the Carry stock for the Hurley stock; that Hurley assented to the original bond remaining in force without the substitution of the Carry stock for the Hurley stock. (R. Vol. 5, page 344.)

Asked why he, witness, did not withdraw the certificate of deposit, he replied that Hurley thought he could get the Equitable to do this later on, and he worked on it and kept corresponding with witness with reference to it along the line that the Equitable Surety Company was unfair; that he really had a gentleman's agreement whereby they would substitute it, and now they refused to do so. That it is not a fact that Van Buren of the Equitable Surety Company insisted that the matter of substitution must be agreed upon before he would sign any new paper in the matter. That witness left the certificate out there, but Hurley kept trying to get "those fellows" to substitute it, and said that eventually he thought he would and witness let him hold it and work it out. That when witness got to Kansas City he gave the certificate of deposit to Hurley, and in his presence, Hurley gave it to Van Buren and Van Buren took it and said he would investigate it. (R. Vol. 5, p. 345). That Van Buren was to let "us" know as to what disposition he would make, which he never did. That Van Buren had not signed new paper up to the time witness left; that Van Buren consented to the assignment of the leases the day that witness was in Kansas City but did not consent to the substitution of the stock. That he consented to the assignment upon the terms of the original bond
114 remaining in force. Again asked by Mr. Merillat why he did not take the certificate of deposit away with him, witness replied:

"If you want to know the reason why I will tell you. The Summit Oil & Gas Company had a cashier's check out there for $11,667.67, deposited with the Citizens' National Bank of Oklahoma in care of Mr. Hurley and Mr. Hurley contented to let me take that money down if this stock was left in his hands or whereby he could hold it. Now, that is the answer to your question and that was the consideration of this stock being left there."

Thereupon the following occurred:

"Q. Who was it that undertook the method of expediting this work of getting these leases, these assignments, to where they would be valid assignments? A. Why, Mr. Hurley.

Q. And he, having that knowledge, was he entrusted by the Summit Oil & Gas Company with the work of accomplishing the result? A. Well, he was and he was not."

Witness stated that by "stock" he meant "certificate of deposit" and that it was to protect Mr. Hurley but never the Equitable Surety Company. That Hurley undertook the expediting getting these assignments of leases to where they would be valid assignments.

Asked whether Hurley was entrusted by the Summit Oil & Gas Company with the work of accomplishing this result, witness answered as follows:

"Well, he used to be. He used to represent this Indian Agency and knew all about the method needed to get the consent of the Secretary of the Interior or the Department of the Interior. And he and Mr. Vandevoort and Mr. Hall, and, well the four of them out there had the two-thirds interest of the original lease and M.
115 A. Brast had the one-third interest. The first assignment was made here by M. A. Brast to the Summit Oil & Gas Company, his one-third interest. When that was done there were individual notes given by myself, Mr. Ault and Mr. Weller and Mr. Brast, and the agreement was then that on account of our having a third interest, Mr. Brast's third interest, we were to put up $11,667.67, and when we left Tulsa, the meeting at Tulsa, we gave our individual notes until we got this money out of Mr. Hurley. We came back and sent the certified check. This money was to protect Mr. Hurley and Mr. Vandevoort and these fellows as against Brast's interest which was had gotten, when this stuff was taken out at that time, it was but taking that money down and having it substituted for Mr. Hurley's stock. Now, that is the entire transaction. The Equitable Surety Company was not known in it. We did not know the Equitable. We were dealing with Mr. Hurley, Mr. Vandevoort, Mr. Hall and Mr. Bird." (R. Vol. 5, pp. 345-348.)

"That when witness left Kansas City the assignment had already been made and it was up to the Equitable Surety Company, so far as the Summit Oil & Gas Company was concerned, and the last named Company had nothing further to do with the Equitable. The trouble was between the Equitable and Mr. Hurley to get the Equitable's consent for the substitution of this stock to release part of his stock, that was all the trouble there was from that day. There wasn't any other." (R. Vol. 5, p. 349.)

Whereupon the witness was interrogated by Mr. Merillat and answered as follows:

"Q. Did you understand and was it stated at that meeting that the Equitable would have to consent or something as a preliminary

to these leases, these assignments going to the Secretary of the
116 Interior? A. Yes, and they had no objection, and held the original bond in force, which was done. They never did substitute this but gave that consent on the original bond." (R. Vol. 5, pp. 349-350.)

On cross-examination the witness Goettman testified that his purpose in taking the certificate of deposit to Kansas City was to try to enable Mr. Hurley to substitute the stocks indicated in said certificate for certain securities then held by the Equitable Surety Company; that witness stated this purpose to Mr. Carry at time he got certificate. That witness went to Kansas City as the Secretary of, and representing, the Summit Oil & Gas Company. Thereupon the witness identified the letters written to him by the witness Hurley, hereinafter set forth, and which letters were offered in evidence by the defendant in its case. (R. Vol. 5, pp. 352-358.)

Thereupon, M. A. BRAST was recalled, and on further direct examination testified that Albert Carry was present at the meeting of the Stockholders of the Summit Oil & Gas Company held at Charleston, W. Va. on the 8th day of December, 1913, and that the assignment of December 2nd, 1913 whereby Brast assigned sixteen (16) parcels of his original lease to the Summit Oil & Gas Company, had been previously executed by him; that Albert Carry was present at a meeting of the Board of Directors held one (1) hour after his election to the Board, in Charleston, W. Va.

"Q. Was there any discussion at this meeting of the Directors of December 8, 1913 in Mr. Carry's presence concerning the assignment of these leases by you to the Summit Oil & Gas Company and any further steps necessary to proceed with the proposition of procuring those assignments? A. The business of operating them and getting them in shape.

117 The Court: I didn't catch that.

Mr. Bradley: Speak so the Court can get that.

The Witness: When we acquired this, one condition was that we had to drill one well on 16 pieces within one year from the time the Interior Department approved the original lease, which was then October sometime. And we had to get a move on ourselves to get that done. Of course we discussed the way and means and all about the leases the prospects for them and the probability of when we would get the wells completed and so forth.

Q. Had the assignment of leases by you to the Summit Oil & Gas Company been approved at this time, on the 8th day of December, 1913?

Mr. Marshall: Objected to. The record is the best evidence to prove the assignment.

The Court: Objection sustained.

The Witness: The assignment——

The Court: Wait a minute. Don't answer that. I sustain the objection.

By Mr. Bradley:

Q. Was there any discussion at that time about having the leases, the assignment of leases approved? A. Yes, there naturally was.

Q. What was the discussion? A. Why, we assumed naturally that they would be approved, in making arrangements to go ahead and develop them. At that time they were considered very valuable.

Q. You say you were assuming they would be approved? A. Certainly. We considered it at that time a routine matter providing we put up the proper bond and so forth.

118 Q. Well, had you given any bond at that time? A. Yes, sir.

Q. The Summit Oil & Gas Company had? A. No, I had individually.

Q. Was that bond,—had it been arranged that that bond would continue after the assignment to the Summit Oil & Gas Company?

Mr. Marshall: We object to that question—arrange with whom and in what manner?

The Court: Show what arrangement was made and with whom.

Mr. Bradley: I am asking if the details of any arrangement necessary to be made——

The Witness: Some of the arrangements.

The Court: I sustain the objection.

Mr. Bradley: Your Honor will note our exception.

By Mr. Bradley:

Q. What, if anything, remained to be done before the Summit Oil & Gas Company could proceed to drill on these leases on this territory? A. Before they could formally take charge of them, the transfer would have to be approved by the Interior Department, by the Government, according to the rules and regulations they had governing the operation of those leases.

Q. Was there any discussion at that time about the rules and regulations? A. Not much, because we had two or three copies before us there.

Q. You had two or three copies of what? A. Of the Government regulations covering the transfer and the operation of those leases.

119 Q. What, if anything, was said? A. It was in pamphlet form.

The Witness: As I remember it there was only one thing open at that time. Now, myself and my associates at that time made the assignment of 16 of these pieces I had acquired from the Government previously.

Q. Speak so his Honor can hear you. A. And they were to assume all of our obligations and penalties. One penalty was that if we did not complete one well within a year on each piece we would forfeit in liquidated damages $2,000, and when myself and my associates got the bond, the Equitable Surety Company of St. Louis,

to execute a bond, put up collateral besides our indemnifying bond. And when we assigned those leases to the Summit Oil & Gas Company, these particular 16, they were to take our place and the intention was to get them to get a new bond and leave out me and my associates clear. Out time was pressing and instead of that we agreed to put up collateral with the bonding company in lieu of what myself and my associates had up, or rather my associates—I didn't put up any myself.

Q. Was there anything said at that meeting of December 8th about getting the consent of the Surety Company to the assignment of these leases to the Summit Oil & Gas Company by you before the Secretary of the Interior would approve them? A. Certainly.

Q. What was said concerning this assignment and the consent of the Surety Company? A. As I understand it, the issue then was—

that the Summit had no collateral.

120 The Court: The question was, what was said at that time?

A. Well, now, I cannot repeat word for word; that has been seven (7) years ago.

Mr. Merillat: The substance of it?

Witness: I can tell you the substance. The substance was to get the approval of my associates and myself and the bonding Company to this substitution and the transfer.

By Mr. Bradley:

Q. Get the approval? A. Yes, sir, we assumed it was a mere formality then to get the Government to do the same, and to do that we had to put up some collateral, and we arranged with Mr. Carry to furnish it.

Q. To do what you had to put up some collateral?

The Witness: The only thing left open after we agreed to let the bond stand, if we had gotten a new bond we would have to pay the regular premium, which was quite an item on that big bond. To avoid that we agreed to substitute the collateral of our own in place of Mr. Hurley's, Vandevoort's and his associates.

Mr. Merillat: What was said on that point? A. And with that agreement we let the old bond ride and took their word that the substitution would be made.

In answer to the question as to what discussion took place at the meeting on December 8th, in the presence of Mr. Carry, about the necessity of getting the Equitable Surety Company to consent to the assignment of *consent to the assignment of* the Brast leases to the Summit Oil & Gas Company as the necessary steps to secure the approval of the Secretary of the Interior, the witness testified that the

matter of collateral that the Summit Oil & Gas Company

121 promised to put up, was discussed and that, as he remembers it, it was on that occasion that it was arranged that Mr. Carry was to furnish the Summit Oil & Gas Company a necessary collateral which it was to put up with the Equitable Surety Company of St. Louis, with which Company witness and his associates were doing

business through its Oklahoma and Kansas City offices, and that it was a question of himself and his associates agreeing to the above arrangement before the Equitable Surety Company and the Government would consent to the assignment. Witness further testified that he was in Kansas City in the office of the Equitable Surety Company, on the 18th day of December, 1913, and saw Mr. Goettman give to Mr. Van Buren, Vice-President of the Equitable Surety Company, the certificate deposit of the National Capital Bank, heretofore admitted in evidence and subsequently saw, on the same day, Mr. Van Buren execute the consent of the surety company to the assignment of the sixteen (16) parcels of the original lease by Brast to the Summit Oil & Gas Company; that on the 18th day of December, in Kansas City, there was some discussion about the consent of the surety company to the transfer of the sixteen (16) parcels to the Summit Oil & Gas Company. This all occurred in the presence of Hurley, Vandevoort, Goettman and the witness, and he thinks Mr. Close. Mr. Van Buren, Vice-President of the Equitable Surety Company was present. In answer to the question as to what was discussed, witness testified that "the main discussion there was the substitution of collateral, the value of the collateral that was offered there in place of Mr. Hurley's collateral—Hurley and his associates' collateral." Thereupon, the following ensued:

122 Q. Was there any collateral offered there by Mr. Carry or by Mr. Goettman? A. This certificate.

Q. This certificate of deposit? A. That was what was offered, with an agreement on the part of Mr. Goettman and myself to have the original stock substituted for that and transferred to their Kansas City or St. Louis—to either Kansas City or St. Louis.

Q. Was this certificate here accepted by the Equitable Surety Company or not? A. Yes, sir.

On cross-examination, the following ensued:

Q. You also testified that this certificate was accepted by Mr. Van Buren on the date when you met there in the office of the Equitable Surety Company in Kansas City. Isn't it a fact that Mr. Van Buren told you that he could not accept it—that the Home Office would have to pass on the value of those securities? A. The Home Office had to pass on the value of it; yes that was the only thing left open, as I remember it.

Q. That was all there was to it, as far as the securities were concerned. A. That was all me and my associates asked for, to accept them in lieu of the other.

Q. And get your stock back? A. Yes, sir.

Q. Did you ever get your stock back? A. No, I didn't have any up.

Q. Did they get their stock back? A. So far as I know, they never did.

123 Q. And the original bond you gave at the time you secured this lease of the Equitable Surety Company as security thereon

continued to remain in full force and effect, did it not? A. Yes, sir.

Q. And this alleged assignment? A. That was our agreement, to leave it stay in force by putting up collateral.

Q. And did it stay in force. A. I think so.

The plaintiff then announced its case closed.

Whereupon the defendant, Albert Carry, offered in evidence and the Court admitted, the following letters over the objection of the plaintiff and allowed plaintiff an exception to the ruling of the Court on each and every offer.

124 Citizens National Bank.

Pawhuska, Okla., Dec. 3, 1913.

Hurley—1.
R. 10/10/19/.

Mr. C. E. Goettman,
Rooms 4th floor, Coyl and Richardson Bldg.,
Charleston, W. Va.

My Dear Mr. Goettman:

I have arrived safely today on time, notwithstanding the usual shaking-up given a passenger on the Midland Valley, and trust that you arrived at your destination without any mishap and found all well.

I found my people out of town and in order to prevent further delay I am sending all the papers in connection with the Brast assignment of sixteen subdivisions of oil land so that you can execute them in full so far as the Summit Oil and Gas Company is concerned and bring them back with you according to your agreement when I will have my parties here to sign up. I would suggest that when you have a metting of your Company you let the munites read something like as follows: "On Motion properly made and voted the action of M. A. Brast, President, and C. E. Goettman, Secretary, in making a development or drilling contract with M. A. Brast, A. W. Hurley, C. E. Vandervoort, R. L. Hall and John L. Bird at Tulsa Okla., on December 2, 1913, which reads as follows in hereby approved, viz; (Here I would suggest that a copy of the agreement be inserted in your minutes.") The minutes should also show by proper motion the final approval of the President and Secretary in accepting the assignment of the Brast lease.

The affidavit as to assignnees should be executed before a notary public by you (Form D); the affidavit showing authority of officials to execute assignment (Form E) should be executed by Mr. Brast as President before a notary public; A finiancial statement of your Company which should be made just as strong as possible and show sufficient cash to handle this deal should be prepared and sworn to on blanks furnished herewith for that purpose, I think your good judgment will suggest anything further that I have failed to mention.

Unless you find it better to go to Oklahoma City first the program in regard to bonding Company as agreed upon just before departure will be carried out and I will hold myself in readiness to go to Kansas City upon your wire, stating when you will be there.

In this connection, I beg to again refer to the certificate of deposit for $11,667.00 sent by the Summit Oil Company as a protion of their collateral behind Mr. Brast's bond and to state that we cannot use this paper under the instructions the Agent received regarding the collateral that would be acceptable which is known and can be verified by Mr. Brast. The part of the instructions to the local agent referring to what collateral would be accepted reads as follows:

"The collateral which you are to take, shall consist of stock of the Citizens National Bank of Pawhuska, Oklahoma, and Cashier's checks or Certificates of Deposit of said Citizens National Bank of Pawhuska, Oklahoma, the bank stock to be duly endorced by the owner thereof and the Cashier's checks or Certificates of Deposit to be made payable to the Equitable Surety Company."

125 We have furnished the collateral accordingly and really feel that we are entitled to a deposit in our bank covering the amount that you are putting up and trust you will send us check for the same per agreement, when we will promptly register to you or deliver in person when you come here the notes and all collateral deposited by you, which we trust will be entirely satisfactory.

In this connection, I desire to call your attention to the little assessment against the West Virginia stock and ask you to kindly mail me your check for $180.00 and assist me if you can in getting a prompt remittance from the Close Drilling Company of $660.00 to cover their part of the funds necessary to be raised at this time, explaining to them that the Company will settle with them in full by note, according to Mr. Brast's agreement. By attending to this promptly you will very much oblige me and help me to discharge obligations against the West Virginia Company that should be taken care of now.

I desire to express my high appreciation of the business-like manner in which you have handled the matter in which we have been mutually interested and to assure you that I shall lend every aid possible to make the proposition a success and earnestly wish that ever- well you drill will be a "gusher."

With kind regards and best wishes, I am,

Yours very truly,

A. W. HURLEY.

A. W. H.—A. F. W.

Please bring certified copy of the minutes of your meeting also.

Citizens National Bank.

Pawhuska, Okla., Feb. 5, 1914.

Hurley—2.
R. 10/10/19.

Mr. C. E. Goettman,
Coyl. and Richardson Bldg.,
Charleston, W. Va.

DEAR MR. GOETTMAN:

"All things come to him who waits" is an old saying and it came true in our case last night by Mike showing up and staying here just long enough to sign up the papers in connection with the other eight pieces and in keeping with instructions contained in your telegram of yesterday.

These papers have been drawn and completed so far as we are *can* on exactly the same terms and conditions as the sixteen pieces formerly assigned to your company. The agreement in triplicate is enclosed herewith which only needs your attest and the seal of the Company, after which you may retain one copy for your files and return the other two to me. The assignment in quintuplicate on government form is also enclosed for completion of the acceptance on page 3. This should be returned to me to be submitted to the Superintendent for his endorcement. The affidavit of assignee signed by Mr. Brast is sent along just to keep it with the other papers and should be returned with them. Evidence showing authority of officers to execute the assignment should be executed by you before a Notary Public, as in former cases. It is scarcely necessary for me to impress upon you the absolute importance of getting these papers back to me at the very earliest date without delay in order that I may get them through the Department as rapidly as possible.

In this connection, I hand you for your files copy of letter from the Indian Office, granting authority for your Company to drill on Subdivisions 55 and 11, which are covered by homestead selections. This was sent me as the Agent of your Company here and I will ask if such papers are received by me in the future shall I file them here or send them to you.

126 I also send for your files copy of approved assignment covering the sixteen pieces turned over to you on December 2nd.

Now, in regard to the bond business. I can absolutely get no satisfaction out of the Equitable people at Kansas City as to on what basis they will accept the collateral you submitted in substitution for that submitted by the Citizens National Bank. I have not been sleeping on my job in connection with this proposition but have been writing Mr. Van Buren frequently on the subject and repeat for your benefit his last letter as follows:

"I am in receipt of your letter of the 28th inst. and beg to advise you that I took this matter up with our Home Office when I was there

on Wednesday and it seems that they have not received as full information regarding the Washington Bank as they feel that they should have in order to ascertain the value of the stocks which are to be substituted for the stock of the Citizens National Bank at Pawhuska. However, they are making further investigation and I have written them again, asking them to determine at a very early date what value they would place on the stocks owned by the Summit Oil and Gas Co. as a basis for substitution, and I think that we will get this matter adjusted within the next few days."

I can construe the action of these people in but one way, and that is that they expect to hold all the collateral they can get, which now amounts virtually to over $70,000.00 and is evidently unreasonable. I discussed this matter with Mr. Brast last night and with the other boys. We came to the conclusion that we would be perfectly willing to lose the premium we have paid on the first bond furnished Mr. Brast if we could arrange to substitute by bond in some other company. Hence I would suggest that you people look into this matter at once through your Washington connection and ascertain if you cannot attain a new bond covering the twenty-four pieces that the Secretary of the Interior will accept and release the first bond altogether. If you can do this I will then endeavor to get a new bond from Markham and the Finance Oil Company, thus releasing fully the liability on the first bond and, of course, we will then all be permitted to draw down our collateral and you will be given the benefit of the $11,000.00 in cash you have up. Brast thought that you would have no trouble in obtaining bond in Washington that could be used in this manner. I wish you would immediately on receipt of this look into the proposition and ascertain if you can get a new bond in Washington without putting up everything that you and all the rest of us own, and, if so, w-ther or not the Equitable Company so far as the twenty-four pieces assigned to your Company are concerned and ascertaining whether or not they will fully release the first bond from all liability thereunder.

It is no use to get a new bond unless we can ascertain from the Secretary of the Interior whether he will release the first bond fully. This you can fully appreciate and, of course, will act accordingly. Consequently would suggest that the first thing you do you have your Washington people find out whether or not the Secretary will accept the new bond to be furnished, as suggested above; and, in so doing release the first bond of all liability thereunder. Then ascertain whether or not you can obtain bond on satisfactcory conditions and terms. Would refer you to the following Company-s who write bonds on this class of business and have representatives in Washington:

The National Surety Company of New York,
The U. S. Fidelity & Guarantee Company of Baltimore,
The American Surety Company of New York,
And, perhaps, others that you can locate through some of your Washington Friends.

127 To facilitate the proposition of handling the assignment sent herewith, perhaps, it will be best to try to obtain consent of our present bonding company and then substitute afterwards; however, you can do as you please in this respect and in the event you care to do this I am enclosing financial statement blank for your use. If you do not expect to handle it through our present company then I would suggest that you obtain a bond from one of the above companies suggested covering the eight pieces assigned in the papers enclosed herewith in the sum of $24,000.00 and send it to me with the papers or make a statement in returning the papers that you will present it to the Secretary's office through your Washington connection.

I did not get a chance to talk much with Mr. Brast last night but I feel both he and Mr. Close, the latter having been here yesterday are very hopeful, as are the Cypsey and other property holders in this new field.

When you return the papers enclosed I wish you would kindly mail me your check for the Acacia stock for I am carrying this personally as I have explained to you before. Mr. Brast and Mr. Close both disclaim any knowledge of the matter but presume it will — convenient for you to send me check as has been suggested in former communications from you on the subject.

Trusting that you will get all the papers back to me with the lease possible delay in order that I may push them to approval, with kind regards and best wishes, I am,

Yours truly,

A. W. HURLEY.

A. W. H.—A. F. W.

Citizens National Bank.

Feb. 14, 1914.

Hurley—4.
10/10/19. R.

Mr. C. E. Goettman,
Coyl. & Richardson Bldg.,
Charleston, W. Va.

DEAR MR. GOETTMAN:

I have your letter of the 10th instant, enclosing assignment of papers, except indemnity bond and financial statement, in regard to which Mr. Brast has already telegraphed you.

I think it is advisable to take this matter up with the old bonding company and will endeavor to get consent to assignment just as soon as your financial statement is received. This, you know, is always required and I sent you blank with specific instructions to have statement properly verified and sent to me with the other papers.

Now, about the indemnity proposition. I saw your telegram to Brast, stating that Trees *and* declined to put up collateral for reasons which you considered proper and acceptable. This, of course, will break into the arrangement you say you have made for sending me

the Washington City Bank stock and $20,000.00 or $25,000.00 additional security, as stated in your communication above referred to.

You will remember that when we first made our trade with you at Tulsa, we were to get the benefit of a $11,000.00 account as we were to put up our Cashier's check for that amount as your part of the collateral required before we could get the original bond; instead of getting any benefit from this a Certificate of Deposit to the bonding company was sent out. Your individual notes are in our possession but we have never considered them as collateral, neither has the bonding company; and as it stands now, the bank stock put up by Vandervoort Bird and myself is the only real collateral that
128 the bonding company has accepted and we feel that we should be indemnified.

If Trees does not want to put up collateral, we would suggest that an in*m*emnity bond with some good bonding company be furnished by Trees and the Summit people in the sum of $72,000.00, indemnifying those who furnished indemnity to secure the first bond. This matter should be arranged definitely without further delay, in keeping with that which is proper, right and just in the premises, and I am sure you appreciate fully the truth of this assertion.

I trust on receipt of this communication you will look after this matter for us as we have always depended on you to see that all things necessary in a legal way come right from your end of the line. It is very essential that these matters be attended to at once and that we get this last assignment before the Department or approval at the earliest possible date. To that end I hope you will be as expeditious as possible.

It may be necessary for you to go in to Washington some time next week and use some of the influence you have there to get our papers through in a hurry; if so, I will notify you.

In the meantime if you think it better to put up the collateral instead of the $72,000.00 bond, as suggested, get it together and come by here and we will go to Saint Louis and see if we cannot jar that other stuff loose.

It seems that very few of the intentions by which our bank was to be benefited in this deal have ever materialized, as I was explaining to Brast this morning. We thought we would get the benefit of the $11,000.00 deposited for collateral, and failed in that. Then, we had every right to believe that we would ha*b*e the Summit Company's account when they came out in this country, but Close opened that in Hominy; so you see, we feel like we have rather been left out in the cold on the bank benefit proposition, at least. But we hope for better things later on and I cetrainly trust that we will not only get one—but several "gushers" in the new field.

Yours truly,

A. W. HURLEY.

A. W. H./A. F. W.

Citizens National Bank.

May 29, 1914.

Hurley—4.
10/10/19. R.

Mr. C. E. Goettman,
c/o Coyl-Richardson Bldg.,
Charleston, West Virginia.

DEAR MR. GOETTMAN:

I do not want you ti get the wrong idea of my letters to you, and I hardly believe you will; but the condition in which the business of the Summit Oil Company has been handled out here is not reflecting credit on any of the stockholders or any friends of the Company, which seems to justify me in writing and wiring you as I have.

A number of parties were here to see — the 27th, among them the representative of the Spurrier Lumber material used in work on the Osage, which prompted my night letter of that date as follows:

"You will pardon me addressing you in regard to the Summit Company for you know why I do. Inquir-es are continually 129 coming to me about the Company's business as it is generally thought I am a stockholder and in some way responsible, hence my anxiety. Will look for you by June first sure. If you see Close ask him to quit checking on us or put his account in funds to take care of his checks."

You appreciate fully why I address you personally, as you are the only man in this company that I have ever been able to get satisfaction out of and are the man that we are really looking to to bring order out of chaos.

A clipping from yesterday's Osage Journel published at Pawhuska I enclose, showing a suit that has been brought against the Company for labor, which is being commented on by people here who know that we are, in a way, connected with you people. I am assuring everybody that you will be out here and have everything paid before June 1 or by June 1 and carrying out the assertion made in your night letter of the 24th instant.

In this cinnection, I want to ask you to please perfect arrangements so that us boys can get our bank stock jarred loose at Kansas City. We are not afraid but that you people protect us on the bond, and of course, the taking down of our bank stock will not entirely relieve us as indemnitors, but it will give us this collateral to work on, which you promised to do when we turned over to you the $11,000.00 certificate of deposit. We think you owe this to us and respectfully urge that you take steps to this end as we have certainly tried to always treat you fairly in every transaction.

Trusting to see you in a few days and that all will turn out good in the end, with kind regards and best wishes,

Yours truly,

A. W. HURLEY.

A. W. H.—A. F. W.

Citizens' National Bank.

Hurley—5. January 28, 1916.
10/10/19. R.

Mr. C. E. Goettman,
Kanawha National Bank,
Charleston, W. Virginia.

DEAR SIR:

I have your communication of the 24th and thank you for your information in regard to the Brast matter which I am sure you realize is about as vague as every other bit of information I have been able to obtain in regard to this transaction of late.

I am glad, however, to know that you are behind the proposition and will try to effect a settlement. If you will kindly let me know exact date on which the Summit will have its next meeting I will try and have something of a definite character in regard to this proposition to lay before the Company.

I paid your draft before I got hold of Brast who, as you say, is much like the Irishman's flea. I do not blame you for selling this stock. In fact I have been on the verge account of the manner in which this property has been mismanaged. As I have stated before, it is a good little way I saw out was to buy up the outstanding shares at such a rate that would justify me in having the property
130 fixed up so that we could sell it and at least get a part of our money out of it.

I will keep you advised as to the lease situation in Osage County. It is very much up in the air at the present time, the renewal of the present leases being considered in Washington.

Trust that you will help me push the Brast bond to the end that Justice may be done us fellows who simply put our bank stock up originally for only a few days. With kind regards, I am,

Yours truly,

A. W. HURLEY.

A. W. H.—A. F. W.

Citizens' National Bank.

Hurley—6. April 15, 1916.
10/10/19. R.

Mr. C. E. Goettman,
Coyl & Richardson Bldg.,
Charleston, West Va.

DEAR MR. GOETTMAN:

I have not heard from you since last January and just thought I would write and ask what you know about the Brast bond proposition.

As predicted, this matter has been placed in the hands of the United States Attorney, I am informed, with instructions to institute suit against the bond company. This means, of course, that the bond

company will call on the indemnity, which means further that the indemnity will call on those who have indemnified us and there will be a general calling on to settle up all around, which I am mighty glad of, as it seems this is the only way a settlement can be obtained.

As I intemated to you and explained to Mr. McClintic when he was out here, I think the proper thing for the Summit to have done was to file a petition for a compromise, showing amount of work that had been done sown here and at what enormous expense and offer a compromise of say $10,000.00 or $15,000.00, filing this petition with the Secretary of the Interior at Washington through your President who, no doubt, has some influential man who would file the petition for you; then, in turn, in my opinion, the petition for a compromise would be forwarded through the Commissioner of Indian Affairs to the office here and submitted to the Osage Council for approval.

Should this be done I am sure that us fellows at this end of the line will boost the proposition along as much as possible and it may be that we could effect some kind of a compromise at this late date, although the matter should have been taken up several months ago when I first suggested it.

131 Now, it is up to you people to act. If you want the matter to go to suit and incur the additional expense and inconvenience of a trial; all right. I do not see how the liability is to be avoided but maybe you do. Anyway, I suggest the foregoing as being the best chance of a solution that will save some money, in my judgment.

I am sending a copy of this letter to Mr. McClintic and suggest that you take the matter up with your company at the earliest possible date and let me know what you want to do so that I can work with you in an intelligent and understanding way.

Very truly,

A. W. HURLEY.

A. W. H.—A. F. W.

Thereupon defendant closes case and after hearing argument by Counsel, the Court said:

The Court: I am satisfied from the evidence that the offer of this stock was conditional, and that the only demand that was made for this stock was with a view to the bringing of a suit, but this was after the lease was secured and was not even then, if it was accepted, an acceptance in compliance with the conditions. I think, therefore, the bill should be dismissed.

JENNINGS BAILEY,
Justice.

Endorsed on cover: District of Columbia Supreme Court. No. 3513. Equitable Surety Company, a Corporation, appellant, vs. The National Capital Bank of Washington, D. C., &c., et al. Court of Appeals, District of Columbia. Filed Feb. 28, 1921. Henry W. Hodges, clerk.